

## Syllabus

IN THE MATTER OF  
INDIAN RIVER MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3940. Complaint, Nov. 3, 1939—Decision, Apr. 17, 1940*

Where a corporation engaged in compounding and in selling and distributing its "Scalf's Indian River Tonic" to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution in commerce as aforesaid, of products for use in connection with treatment of ailments, diseases, and conditions for which it represented and claimed its preparation to be a treatment, and including many who do not falsely represent their products or the benefits to be derived from the use thereof; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and circulars and other printed or written matter distributed in commerce among the various States, and through continuities broadcast from stations of extrastate audience, and otherwise, and which were intended and likely to induce direct or indirect purchase of its said preparation—

- (a) Represented, directly or indirectly, that its said "Scalf's Indian River Tonic" would prevent and cure colds and build up resistance to other minor ailments, and that it constituted a competent or effective remedy or cure for rheumatism and competent and effective treatment for removing or overcoming causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, and aches and pains in the head and joints; and
- (b) Represented, as aforesaid, that it was a cure or remedy for ailments of the liver, kidneys, and stomach and would increase weight, restore strength, and build up the general health of the user, and was composed of natural vegetable ingredients, and constituted a competent cure or remedy for asthma and had substantial value in the treatment thereof, and afforded positive or certain relief from chronic ailments;

Facts being it would not prevent or cure colds, serve to build up resistance to other ailments, was not a competent or effective cure or remedy for rheumatism, had no value for removing or overcoming causes of sleeplessness, nervousness, or indigestion, and was not a cure or remedy for and had no therapeutic value in the treatment of other ailments and conditions above set forth, would not accomplish results claimed therefor as aforesaid, and was not composed of natural vegetable ingredients, and would not afford positive or certain relief for any ailments, and its aforesaid statements, representations, and advertisements were false and misleading;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and claims were true, and of causing substantial portion of said public, because of such belief, to purchase its product, and with the result that trade was thereby diverted unfairly to it from its competitors likewise

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engaged in sale and distribution in commerce, as aforesaid, of similar medicinal preparations or those intended for similar usage:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. Jesse D. Kash* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Indian River Medicine Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Indian River Medicine Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee and having its office and principal place of business in La Follette, State of Tennessee. Respondent is now, and has been for more than one year last past, engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated as "Scalf's Indian River Tonic."

Respondent causes its said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been for some time last past, engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing in commerce among the various States of the United States and in the District of Columbia preparations for use in connection with the treatment of ailments, diseases, and conditions of the human body for which respondent represents and claims its preparation to be a treatment.

PAR. 4. In the course and conduct of its aforesaid business, respondent, has disseminated, and is now disseminating, and has caused and

is now causing the dissemination of, false advertisements concerning its said product by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations which have sufficient power to, and do, convey the programs emanating therefrom to listeners thereof located in various States of the United States other than the State from which said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Low resistance, \* \* \* is the main cause of a great many ailments, especially is this true in the case of a bad cold. Let me urge then the use of Scalf's Indian River Tonic as a cold preventative as it not only keeps your resistance built up but helps you in warding off the dangers of minor ailments.

Scalf's Indian River Tonic \* \* \* a leader among America's health builders.

For 18 weeks I was down with rheumatism, could hardly walk so I heard you speaking on the radio of this Indian River Tonic. I began taking it and in a short time I was well and strong again.

Winter time brings colds and coughs, and colds and coughs result—all too often—in a badly run-down condition that frequently leads into other more serious complications. Begin Now building up that body of yours so that—by the attainment of vigorous health—you will be able to quickly Throw Off all the most common of cold-weather ailments. For the proper conditioning of your system, Your Druggist will strongly recommend the daily use of Scalf's Indian River Tonic.

A natural Vegetable Compound. \* \* \*

Nature's Own Health Builder.

I feel there is no remedy that can be compared with Scalf's Indian River Tonic for stomach trouble.

\* \* \* If you are nervous, cannot sleep at night, tired and worn out when you arise in the morning. If your head aches day after day and you feel you cannot carry on, if your joints ache and pain then Nature has placed her red lantern of danger. It is time to set about getting rid of the cause of such symptoms. Start using Scalf's Indian River Tonic Today.

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I was suffering from what was claimed to be kidney poison. This had brought on a serious nervous condition and my resistance was gone. Scalf's Indian River Tonic brought back my health and strength.

For many years I suffered with a chronic illness that I had been unable to overcome. I could not digest my food. Gas pressure was extremely great and seemed to affect my heart action. My liver did not function properly and my kidneys were in a serious condition. I could not eat or sleep and naturally my nervous system was wrecked. I decided to try Scalf's Indian River Tonic and used an entire six bottle treatment. The results have been amazing. I eat most anything I want. I sleep like a baby.

Scalf's Indian River Tonic \* \* \* certified product of merit that had passed a strict and rigid medical test.

My father was in a very critical condition as a result of flu, run down and it seemed a general broken down condition of his nervous system. He could not regain his health, but finally used Scalf's Indian River Tonic. He is entirely well.

I was subject to colds, and it seemed I could not rid myself of them. I finally started using Scalf's Indian River Tonic \* \* \* I have not had a bad cold since.

Scalf's Indian River Tonic \* \* \* Is \* \* \* Manufactured According to a Formula Described to \* \* \* Stimulate the Blood Stream.

It is just the thing for you in your chronic ailments. It brings relief \* \* \* certain relief.

Scalf's Indian River Tonic \* \* \* gives you the added energy that you need.

I suffered severely from Asthma. Scalf's Indian River Tonic worked a miracle in my case.

I lost my appetite and strength \* \* \* weighed 93 pounds \* \* \* unable to do any work. I began with Scalf's Indian River Tonic and was amazed at how my appetite improved \* \* \* my strength came back and I weighed 127 pounds.

PAR. 5. Through the use of the representations hereinbefore set forth and others similar thereto not specifically herein set out, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondent's product, respondent has represented, and does now represent, directly or indirectly, that its said product will prevent and cure colds and build up resistance to other minor ailments; that it is a competent and effective remedy or cure for rheumatism; that said preparation is a competent and effective treatment for removing or overcoming the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion and gas pressure, aches and pains in the head and joints; that it is a cure or remedy for ailments of the liver, kidneys, and stomach; that it will improve the appetite, increase the weight, restore the strength and build up the general health of the user; that said product is composed of natural vegetable ingredients; that it is a competent cure or remedy for asthma and has substantial value in the treatment thereof; that it affords positive or certain relief from chronic ailments.

PAR. 6. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation will not prevent or cure colds, nor will it serve to build up resistance to other ailments. It is not a competent or effective cure or remedy for rheumatism. It has no value as a competent or effective treatment for removing or overcoming the causes of sleeplessness, nervousness, indigestion, or gas pressure. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of, ailments of the liver, kidneys, or stomach. It will not improve the appetite or increase the weight or restore the strength or build up the health of the user. Said preparation is not composed of natural vegetable ingredients. It will not remove the cause of aches or pains in the head or joints. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of, asthma. It will not afford positive or certain relief for any ailment.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 herein are many who do not falsely represent their products or the benefits to be derived from the use thereof.

PAR. 8. The use by the respondent of the foregoing, false, deceptive and misleading statements, representations and claims with respect to its said preparation, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and claims are true, and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product. In consequence thereof trade has been diverted unfairly to respondent from its competitors and substantial injury has been done and is being done to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 3, 1939, issued and on November 6, 1939, served its complaint in this proceeding upon respondent, Indian River Medicine Co., a corporation, charging it with

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the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. Subsequent to the filing of the original answer, the Commission by order entered herein granted respondent's request for permission to withdraw its answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint, with two exceptions therein specified, and waiving all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Indian River Medicine Company, is a corporation organized and doing business under the laws of the State of Tennessee, with its office and place of business located at La Follette, Tenn.

Respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated "Scalf's Indian River Tonic."

Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now and has been for some time last past engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing in commerce among the various States of the United States and in the District of Columbia a preparation for use in connection with the treatment of ailments, diseases, and conditions of the human body for which respondent represents and claims its preparation to be a treatment.

PAR. 4. In the course and conduct of its aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said product by United States mails, by insertion in newspapers

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and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations which have sufficient power to, and do convey the programs emanating therefrom to listeners thereof located in various States of the United States other than the State from which said broadcasts originate, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said product, and has disseminated, and is now disseminating, has caused, and is now causing the dissemination of false advertisements concerning its said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Low resistance, \* \* \* is the main cause of a great many ailments, especially is this true in the case of a bad cold. Let me urge them the use of Scalf's Indian River Tonic as a cold preventative as it not only keeps your resistance built up but helps you in warding off the dangers of minor ailments.

Scalf's Indian River Tonic \* \* \* a leader among America's health builders.

For 18 weeks I was down with rheumatism, could hardly walk so I heard you speaking on the radio of this Indian River Tonic. I began taking it and in a short time I was well and strong again.

Winter time brings colds and coughs, and colds and coughs result—all too often—in a badly run-down condition that frequently leads into other more serious complications. Begin NOW building up that body of yours so that—by the attainment of vigorous health—you will be able to quickly Throw Off all the most common of cold-weather ailments. For the proper conditions of your system, Your Druggist will strongly recommend the daily use of Scalf's Indian River Tonic.

A natural Vegetable Compound \* \* \*.

Nature's Own Health Builder.

I feel there is no remedy that can be compared with Scalf's Indian River Tonic for stomach trouble.

\* \* \* If you are nervous, cannot sleep at night, tired and worn out when you arise in the morning. If your head aches day after day and you feel you cannot carry on, if your joints ache and pain then Nature has placed her red lantern of danger. It is time to set about getting rid of the cause of such symptoms. Start using Scalf's Indian River Tonic today.

I was suffering from what was claimed to be kidney poison. This had brought on a serious nervous condition and my resistance was gone. Scalf's Indian River Tonic brought back my health and strength.

For many years I suffered with a chronic illness that I had been unable to overcome. I could not digest my food. Gas pressure was extremely great and

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seemed to affect my heart action. My liver did not function properly and my kidneys were in a serious condition. I could not eat or sleep and naturally my nervous system was wrecked. I decided to try Scalf's Indian River Tonic and used an entire six bottle treatment. The results have been amazing. I eat most anything I want. I sleep like a baby.

Scalf's Indian River Tonic \* \* \* a certified product of merit that had passed a strict and rigid medical test.

My father was in a very critical condition as a result of flu, run down and it seemed a general broken down condition of his nervous system. He could not regain his health, but finally used Scalf's Indian River Tonic. He is entirely well.

I was subject to colds, and it seemed I could not rid myself of them. I finally started using Scalf's Indian River Tonic \* \* \* I have not had a bad cold since.

Scalf's Indian River Tonic \* \* \* is \* \* \* Manufactured According to a Formula Described to \* \* \* Stimulate the Blood Stream.

It is just the thing for you in your chronic ailments. It brings relief \* \* \* certain relief.

Scalf's Indian River Tonic \* \* \* gives you the added energy that you need.

I suffered severely from Asthma. Scalf's Indian River Tonic worked a miracle in my case.

I lost my appetite and strength \* \* \* weighed 93 pounds \* \* \* unable to do any work. I began with Scalf's Indian River Tonic and was amazed at how my appetite improved \* \* \* my strength came back and I weighed 127 pounds.

PAR. 5. The Commission finds that through the use of the statements and representations hereinbefore set forth in paragraph 4 hereof and others similar thereto, not specifically herein set out, all of which purport to be descriptive of the remedial, curative or therapeutic properties of respondent's product, respondent has represented and does now represent, directly or indirectly, that its said product "Scalf's Indian River Tonic" will prevent and cure colds and build up resistance to other minor ailments; that it is a competent and effective remedy or cure for rheumatism; that it is a competent and effective treatment for removing or overcoming the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, aches, and pains in the head and joints; that it is a cure or remedy for ailments of the liver, kidneys and stomach; that it will increase the weight, restore the strength and build up the general health of the user; that it is composed of natural vegetable ingredients; that it is a competent cure or remedy for asthma and has substantial value in the treatment thereof; that it affords positive or certain relief from chronic ailments.

PAR. 6. The Commission finds that the aforesaid false and misleading statements, representations and advertisements set forth in paragraphs 4 and 5 hereof, which respondent made and makes with re-

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spect to the therapeutic value of its product, are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation will not prevent or cure colds, nor will it serve to build up resistance to other ailments. It is not a competent or effective cure or remedy for rheumatism. It has no value as a competent or effective treatment for removing or overcoming the causes of sleeplessness, nervousness, or indigestion. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of ailments of the liver, kidneys, or stomach. It will not increase the weight, restore the strength or build up the health of the user. Said preparation is not composed of natural vegetable ingredients. It will not remove the cause of aches or pains in the head or joints. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of asthma. It will not afford positive or certain relief for any ailment.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 hereof are many who do not falsely represent their products or the benefits to be derived from the use thereof.

PAR. 8. The use by the respondent of each and all of the foregoing false, deceptive and misleading statements, representations, and claims with respect to its said medicinal preparation disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and claims are true, and causes, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product. As a result, trade has been diverted unfairly to respondent from its competitors who are likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of similar medicinal preparations or other preparations intended for similar usage.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set

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forth in said complaint, with two exceptions therein specified, and states that it waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Indian River Medicine Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its medical product "Scalf's Indian River Tonic," do forthwith cease and desist from:

Disseminating or causing to be disseminated any advertisement by means of United States mails or in commerce as "commerce" is defined in the Federal Trade Commission Act, by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of a medical preparation containing drugs now designated by the name "Scalf's Indian River Tonic," or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said medical preparation, which advertisements represent directly or through implication—

1. That respondent's preparation will prevent or cure colds or build up resistance to other bodily ailments.
2. That respondent's preparation is a cure or remedy for rheumatism.
3. That respondent's preparation has any therapeutic value in the treatment of the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, or aches and pains in the head or joints.
4. That respondent's preparation has any therapeutic value in the treatment of liver, kidney, or stomach disorders or that its use constitutes a cure or remedy for any of such disorders.
5. That respondent's preparation will increase weight, restore strength, or build up the health of the user thereof.
6. That respondent's preparation is composed of natural vegetable ingredients.
7. That respondent's preparation is a cure or remedy for asthma or that it has any therapeutic value in the treatment thereof.
8. That respondent's preparation affords positive or certain relief for any ailment.

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*It is further ordered,* That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

## IN THE MATTER OF

EILEEN-JOY FASHIONS, INC., TEEN FROCKS, INC.; AND  
MORRIS SCHARF AND HENRY DUDKIN, INDIVIDUALLY,  
AND AS OFFICERS OF EILEEN-JOY FASHIONS, INC.  
AND TEEN FROCKS, INC., AND FORMERLY COPART-  
NERS TRADING AS EILEEN-JOY FASHIONSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4038. Complaint, Feb. 23, 1940—Decision, Apr. 17, 1940*

Where two corporations and two individuals, former partners who were officers thereof and at all times since organization thereof dominated and controlled one or both, as case might be, engaged in manufacture of various grades and types of dresses and other wearing apparel for women, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such dresses and other articles of wearing apparel; in furtherance of a practice of falsely representing the constituent fiber or material of which their said products were made, through false representations on tags, labels, price lists, and in various advertising material, and through failure to disclose rayon content of certain of such products, and to induce purchase thereof and endeavor to aid jobbers, retailers, and other purchasers to procure customers' orders therefor—

- (a) Represented, as typical of their said acts and practices, certain of their fabrics as being composed of silk, product of cocoon of silk worm, through placing on and using in tags, labels, price lists, and various advertising circulars and other printed matter, term "Taffeta" as descriptive of material from which fabric in question was made, notwithstanding fact said fabric was not, as understood by members of purchasing public from said word and as associated with such word, used unqualified, to designate, describe, and refer to dress goods and other items of women's wearing apparel, silk, product of cocoon of silk worm, and products of which are and have long been held in great public esteem and confidence for their preeminent qualities;
- (b) Represented, as aforesaid and as typical of said acts and practices, certain of their fabrics as being composed of silk, product of cocoon of silk worm, and as below set forth, through placing on or using in tags, labels, price lists, and various advertising circulars and other printed matter, term "Pure Dye" as descriptive of material from which product in question was made, notwithstanding fact fabric in question was not made of silk, product of cocoon of silk worm, which had not been subject to a metallic bath and which, except for necessary dyeing and finishing materials, contained no other;
- (c) Represented, as aforesaid, certain of their fabrics as being composed of silk, product of cocoon of silk work, through placing on or using in tags, labels, price lists, and in various other advertising circulars and other printed matter, terms "Celanese" and "Celanese Clairanese Taffeta," notwithstanding fact product in question was not composed of silk, product of cocoon of silk work, but was made of material other than silk, or rayon, and words "Celanese" and "Celanese Clairanese," used either sepa-