

IN THE MATTER OF
RALPH CORN UNDERWEAR, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4017. Complaint, Feb. 5, 1940—Decision, Oct. 8, 1940

Where a corporation engaged in sale and distribution of women's wearing apparel, including slips, gowns, and pajamas, to retailer purchasers in the various States and in the District of Columbia; in making various representations concerning character and quality of its said garments, including fiber and material of which made, and as to character of business conducted by it, through descriptive circulars distributed through the mails and otherwise, and by labels attached to such garments, and by use of letterheads used in correspondence with purchasers and prospective purchasers of its products—

- (a) Made use, as typical of such representations as to material or fiber, of words "satin" and "crepe," and also of word "silk," through statements in its circulars, distributed as above set forth, as " * * * Satin and Pigment Crepe Slips, Gowns and Man-Tailored Pajamas," "Pigment Back Silk Satin Slip," "Pigment Crepe Heavy Quality Satin Striped Gown," and "Multifilament Crepe Gowns," notwithstanding fact none of said garments sold by it were made entirely of silk, product of cocoon of silkworm, as long associated in minds of public with words "satin" and "crepe," unqualified, and used in connection with descriptions or designations of women's clothing, with materials made of product of silkworm, and as descriptive of fabrics of products thereof, long held in great public esteem and confidence for their preeminent qualities, and by reason thereof decidedly preferred on part of purchasing public, but were made of rayon, or other material and rayon, which, when so manufactured as to simulate silk has appearance and feel thereof, and is by purchasing public practically indistinguishable therefrom, and is, therefore, readily believed to be and accepted by purchasing public as being silk as aforesaid; and
- (b) Represented itself, as aforesaid, as manufacturer of garments sold and distributed by it, through use in its advertising material and on its letterheads of words "Manufacturers of Silk Undergarments," facts being garments in question were designed, patterned, and cut by its employees on its own premises from piece goods, trimmings, and other necessary materials purchased by it on open market, with such materials then sewed by independent sewing concerns under contract with it, and finished garments returned to it for distribution to trade, and it was not manufacturer and did not own, operate, or control any manufacturing plant;

With capacity and tendency to mislead and deceive substantial portion of members of purchasing public into erroneous belief that items of wearing apparel advertised by it as above set forth were made entirely of silk, and into purchase of substantial volume thereof on account of such belief, and with result, through designation of itself as manufacturer of silk garments, of influencing purchasers to deal with its as manufacturer, for dealing with whom directly there has long been preference on part of substantial portion

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of consuming public and trade as thereby bringing lower prices, elimination of middlemen's profits, superior products and other advantages, in preference to dealing with distributors of similar products who are not manufacturers thereof:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Milton Zuckerman, of New York City, for respondent.

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 Ralph Corn Underwear, Inc., 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ralph Corn Underwear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 36 East Thirty-first Street, New York City, N. Y. Respondent is now, and during the year last past has been, engaged in the sale and distribution of women's wearing apparel, including slips, gowns, and pajamas. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the city of New York to purchasers at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia.

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

PAR. 2. In the course and conduct of its aforesaid business, by means of descriptive circulars distributed through the United States mails, and otherwise, by labels attached to said garments, and by the use of letterheads used in correspondence with purchasers and prospective purchasers of its products, respondent has made various false representations concerning the character and quality of its said garments, including the fiber and material of which the same are made.

Among and typical of the false representations made by respondent as to the material or fiber of which respondent's products are made are the following statements contained in its circulars and distributed as above stated:

Ralph Corn Underwear, Inc., the king of Satins, Satin and Pigment Crepe Slips, Gowns, and Man-tailored Pajamas.

Pigment Back Silk Satin Slip.

Pigment Crepe Heavy Quality Satin Striped Gown.

Multifilament Crepe Gowns.

Respondent has also used in its advertising material and on its letterheads the words "Manufacturers of Silk Undergarments." Through the use of the foregoing representations and other representations of similar import not specifically set out herein the respondent represents that its said products are made entirely of silk, the product of the cocoon of the silkworm.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, none of the garments sold by respondent are made entirely of silk, the product of the cocoon of the silkworm, but the same, on the contrary, are made of rayon or other material that is not silk, or of a mixture of rayon and silk.

PAR. 4. The word "silk" for many years last past has had, and still has in the minds of the purchasing and consuming public generally, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities, and because of such reputation there is a decided preference on the part of the purchasing public for such products. Silk fibers have long been woven into fabrics and certain descriptive terms have been applied to such fabrics. Among such are the words "satin" and "crepe." The words "satin" and "crepe," when used alone or unaccompanied by the name of a specific fabric or fiber, in connection with the description or designation of women's clothing, have been for a long time, and still are, associated in the minds of the public with materials made of the product of the cocoon of the silkworm, and such words when used as aforesaid, are considered as being descriptive of silk fabrics. The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities rayon, when manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 5. Respondent, through the use of the word "Manufacturers," as aforesaid, has represented itself as the manufacturer of the garments sold and distributed by it. In truth and in fact, respondent does not manufacture any of the garments sold and distributed by it, but buys the material on the open market and has such garments manufactured by other parties.

PAR. 6. There has long been a preference on the part of a substantial portion of the consuming public and the trade for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained.

PAR. 7. The use by the respondent of the false and misleading representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchase of a substantial volume of respondent's products on account of such belief so induced.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 February 5, 1940, issued its complaint against respondent, Ralph Corn Underwear, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 20, 1940, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Milton Zuckerman, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be made a part of the record herein, and may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts), and its conclusion based thereon, and enter an order disposing of the proceeding, reserving to the respondent the right to submit brief or oral argument or both with respect to respondent's claim to be a manufacturer. Thereafter the proceeding regularly came on for final hear-

ing before the Commission on the said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and briefs in support of the complaint and in opposition thereto, oral argument not having been requested; 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, Ralph Corn Underwear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 36 East Thirty-first Street, New York City, N. Y. Respondent is now, and during the year last past has been, engaged in the sale and distribution of women's wearing apparel, including slips, gowns, and pajamas. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the city of New York to purchasers at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia.

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

PAR. 2. In the course and conduct of its aforesaid business, by means of descriptive circulars distributed through the United States mails, and otherwise, by labels attached to said garments, and by the use of letterheads used in correspondence with purchasers and prospective purchasers of its products, respondent has made various representations concerning the character and quality of its said garments, including the fiber and material of which the same are made, and as to the character of business conducted by respondent.

Among and typical of the representations made by respondent as to the material or fiber of which respondent's products are made are the following statements contained in its circulars and distributed as above stated:

Ralph Corn Underwear, Inc., the king of Satins, Satin and Pigment Crepe Slips, Gowns, and Man-Tailored Pajamas.

Pigment Back Silk Satin Slip.

Pigment Crepe Heavy Quality Satin Striped Gown.

Multifilament Crepe Gowns.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning; to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities, and because of such reputation there is a decided preference on the part of the purchasing public for such products. Silk fibers have long been woven into fabrics and certain descriptive terms have been applied to such fabrics. Among such are the words "satin" and "crepe." The words "satin" and "crepe," when used alone or unaccompanied by the name of a specific fabric or fiber, in connection with the description or designation of women's clothing, have been for a long time, and still are, associated in the minds of the public with materials made of the product of the cocoon of the silkworm, and such words, when used as aforesaid, are considered as being descriptive of silk fabrics. The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is readily believed to be, and is accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 4. In truth and in fact, none of the garments sold by respondent are made entirely of silk, the product of the cocoon of the silkworm, but the same, on the contrary, are made of rayon or other material that is not silk, or a mixture of rayon and silk.

PAR. 5. Respondent has further used in its advertising material and on its letterheads the words "Manufacturers of Silk Undergarments." Respondent through the use of the word "Manufacturers," as aforesaid, has represented itself as the manufacturer of the garments sold and distributed by it.

The method of manufacture of the garments sold and distributed by respondent is as follows:

Respondent purchases on the open market piece goods, trimmings, and the other necessary materials from which its garments are made. The garments are designed, patterned, and cut by respondent's employees on its own premises and the materials are then sewed by independent sewing contractors under contract with the respondent, and the finished garments are then returned to respondent for distribution to the trade.

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The Commission finds that this method does not constitute respondent a manufacturer. The Commission further finds that respondent does not own, operate, or control any manufacturing plant.

PAR. 6. There has long been a preference on the part of a substantial portion of the consuming public and the trade for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 7. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that the items of wearing apparel, advertised by the respondent in the manner set forth in paragraph 2 hereof, are made entirely of silk and into the purchase of a substantial volume of respondent's wearing apparel on account of such belief.

The respondent's designation of itself as a manufacturer of silk undergarments has also influenced purchasers to deal with respondent in preference to dealing with distributors of similar products who are not manufacturers of such products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public, and constitute 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, the answer of the respondent and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that the facts as stated therein may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts), and its conclusion based thereon, and enter an order disposing of the proceeding and briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the

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facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ralph Corn Underwear, Inc., 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 women's wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified terms "satin" or "crepe" or any other descriptive terms indicative of silk, to describe or designate any garment or fabric which is not composed wholly of silk, the product of the cocoon of the silkworm; provided, however, that when said terms are used truthfully to designate or describe the type of weave, construction, or finish, such terms shall be qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which such products are made.

2. Using the unqualified term "silk" or any other term of similar import or meaning, to describe or designate any garment or fabric which is not composed wholly of silk, the product of the cocoon of the silkworm; provided, however, that in the case of a garment or fabric composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content, when such term or terms are immediately accompanied by a word or words of equal conspicuousness accurately describing and designating such other materials in the order of their predominance by weight, beginning with the largest single constituent.

3. Advertising, offering for sale, or selling garments or fabrics composed in whole or in part of rayon, without clearly disclosing the fact that such garments or fabrics are composed of rayon, and when such garments or fabrics are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

4. Using the word "Manufacturer" or "Manufacturers" to designate or describe respondent's business, or otherwise representing that respondent is a manufacturer or that respondent manufactures the products sold by it.

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
**PARKER T. FREY, DOING BUSINESS AS PARKER T. FREY
COMPANY AND NEARBY SALES COMPANY**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (C) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED
BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4290. Complaint, Aug. 29, 1940—Decision, Oct. 8, 1940

Where an individual engaged for many years, in his own right and trading under certain firm names, in (1) acting as broker in sale of food products, and particularly canned sea food and vegetables; and in (2) buying and selling, for his own account, such products, and in causing same, thus purchased, to be shipped and transported by sellers thereof from their respective other States to himself or, pursuant to instructions and directions, to respective purchasers to whom said products had been resold by him—

Received and accepted, in course of business of buying, as aforesaid, for his own account, such products, from numerous sellers thereof, brokerage fee or allowance or discount in lieu thereof on many purchases made, as above set forth, for his said own account and for resale:

Held, That, in accepting and receiving discounts and allowances in lieu of brokerage upon such own account purchases in interstate commerce as above set forth, he violated provisions of section 2 (c) of Clayton Act, as amended by Robinson-Patman Act.

Mr. John W. Carter, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C. title 15, sec. 13), as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has been, and is now, violating the provisions of subsection (c) of section 2 of said act, as amended, issues its complaint against said respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent Parker T. Frey is an individual doing business principally under the firm name and style of the Parker T. Frey Co. but also under the firm name and style of the Nearby Sales Co. The respondent has his principal office and place of business at 135 South Second Street, Philadelphia.