

Syllabus

IN THE MATTER OF
 MAX KRAUSS, TRADING AS AMERICAN CORD &
 WEBBING COMPANY

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

· *Docket 4112. Complaint, Apr. 26, 1940—Decision, Jan. 10, 1941*

Where an individual engaged in competitive interstate sale and distribution of cloth tape or web for use in manufacturing venetian blinds, and including among those to whom he sold said product, manufacturers or wholesalers of such blinds, for use in making same—

- (a) Represented that all of his colors were produced by means of vat dyes, through such statements, on advertising folders distributed among prospective customers and displaying tape showing various colors in which such tape might be obtained, as "VAT DYES are the FASTEST Dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.," "THE PERMANENCE OF VAT DYES is due both to their natural characteristics and to the processes by which they are applied. * * *," and "LABORATORY TESTS prove superior fastness of vat dyes";

Facts being not all of their said colors, as thus represented, were produced by means of vat dyes, but two of such colors portrayed on folder in question, namely, "Chinese Red" and "Black," were not vat dyes, but those produced by other methods, as was not disclosed in folder and descriptive matter referred to;

- (b) Represented that the colors of his products were superior in fastness and durability to other colors used for similar purposes, and that his said products had been subjected to certain tests extending over designated periods and that results thereof demonstrated that colors used therein would not fade or change and that they were in fact impervious to effects of sunlight, through such statements in certain of his advertising material, displaying in parallel columns results, as there set forth, of tests made with an instrument producing "artificial sunlight, stronger than midday sun," and such statements therein, under respective captions "Direct or any Other Ordinary Commercial Colors," and "Yarn Dyed Vat Colors used in Lintex Brand Venetian Blind Web," as "Chocolate. Exposed 50 hours. Result—decided fade," and "Chocolate. Exposed 240 hours. Result—no appreciable sign of fading," and other more or less comparable statements for other colors;

Facts being that, as shown by tests made at instance of Commission, his colors were not superior in all cases to the other colors used for similar purposes, and were not impervious to the effects of sunlight and would not resist change for the periods of time designated by him, but faded appreciably when subjected to sunlight for periods of time which were much shorter than that which he designated;

- (c) Made use of coined word "Lintex" as trade name for some of his products; Facts being web or tape thus branded was made of cotton entirely and was not, as substantial portion of purchasing public would understand from use of word "Lintex," linen or fabric or product of flax, as long associated in mind

Complaint

32 F. T. C.

of purchasing public with word "linen," and was not such a product, pre-eminent qualities of which have long held esteem and confidence of public and for which there is marked preference on part of a substantial portion of the purchasing public over fabrics made of cotton; and

- (d) Made use of coined word of "Siltex" as a trade name for some of its products; Facts being the web or tape thus branded was made entirely of cotton and of rayon, which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, so that, when thus made and not designated as rayon, it is readily believed and accepted by said public as and for silk, and its said "Siltex" products were not, as substantial portion of purchasing public would understand from said word, made of silk, product of the cocoon of the silkworm, as long definitely understood by purchasing public, and products of which have long held esteem and confidence of public for their preeminent qualities and are preferred on the part of substantial portions of the public over products made of cotton and rayon;

With result, through use of said trade names to designate such products, and through failure to disclose that those designated "Siltex" were in fact composed in part of rayon, that there was placed in the hands of uninformed or unscrupulous jobbers means and instrumentality whereby such jobbers and dealers were enabled to mislead and deceive a substantial portion of members of purchasing public as to fiber content of products in question, and with the effect, as a result of the erroneous and mistaken beliefs on part of purchasing public, induced by his representations hereinbefore set forth, that such public was induced to purchase substantial quantities of his products, and trade was thereby diverted unfairly to himself from his competitors aforesaid:

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

Mr. George W. Williams for the Commission.

Nathan & Nathan, 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 Max Krauss, an individual, trading as American Cord & Webbing Co., hereinafter referred to as respondent, has violated the provisions of 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. Respondent, Max Krauss, is an individual trading as American Cord & Webbing Co., with his place of business at 394 Broadway, in the city of New York, State of New York. Respondent is now, and for more than 2 years last past has been, 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 cloth tape or web used in connection with Venetian blinds, upholstery, and other articles. Respondent causes and has caused such tape or web, when sold, to be shipped from his said place of business in the State of New York to purchasers in other States of the United States and in the District of Columbia.

In the course and conduct of his business said respondent has been and now is in competition with other individuals and with firms, partnerships, and corporations also engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business and for the purpose of inducing the purchase of his said products, respondent has made false and misleading representations with respect to the character and the fastness of the colors of his products and with respect to the constituent fibers or materials of which such products are made, such representations being made by means of circulars, folders and other advertising material distributed among prospective purchasers, by advertisements inserted in trade journals, and by other means.

Among the products sold and distributed by respondent is a variety of tapes which are colored by dyes known as "Vat Dyes." In connection with this line of his products, the respondent distributes among prospective purchasers an advertising folder to which are attached samples of certain of respondent's tapes showing the various colors in which such tapes may be obtained. On said folder the respondent makes the following representations:

VAT DYES are the FASTEST dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.

THE PERMANENCE OF VAT DYES is due to both their natural characteristics and to the processes by which they are applied. They become soluble after chemical treatment. Later they are made insoluble through oxidation, which makes the color a permanent part of the fabric.

LABORATORY TESTS prove superior fastness of vat dyes.

Guaranteed Fastest to Sunlight * * * and Other Color Destroying Elements.

Said folder contains no statement indicating that any of the colors portrayed are not vat dyes.

Through the use of the foregoing representations, and other representations of similar import not specifically set out herein, and through such failure to disclose the facts with respect to said colors, the respondent represents that all of said colors are produced by means of vat dyes. In truth and in fact two of the said colors portrayed on said folder, to-wit, "Chinese Red" and "Black," are not "Vat dye" colors, but are colors produced by other methods, the color

"Chinese Red" being produced by a process known as the naphthol process, and the color "Black" being produced by a process known as the sulphur process.

PAR. 3. As illustrative of the purported fastness and durability of the dyes used to color his said products and of the purported superiority of such dyes over other dyes, the respondent has caused to be inserted in certain of his advertising material charts or tables, among and typical of which is the following:

COMPARATIVE FADE-OMETER*

Tests made on colors most likely affected by sunlight.

Direct or Any Other Ordinary Commercial Colors	Yarn Dyed Vat Colors Used in Lintex Brand Venetian Blind Web
Chocolate	Chocolate
Exposed 50 hours	Exposed 240 hours
Result—decided fade	Result—no appreciable sign of fading
Mulberry	Mulberry
Exposed 60 hours	Exposed 250 hours
Result—change in color	Result—no change in color
Cream	Cream
Exposed 50 hours	Exposed 200 hours
Result—faded	Result—the same color retained
Navy Blue	Navy Blue
Exposed 40 hours	Exposed 240 hours
Result—faded streaky light blue	Result—color uniformity maintained

Similar tests have been made on all of the other colors with comparable results.

*FADE-OMETER is an instrument producing artificial sunlight, stronger than midday sun.

Through the use of the foregoing representations, and others of similar import not set-out herein, the respondent represents that the colors of his products are superior in fastness and durability to other colors used for similar purposes; that respondent's products have been subjected to certain tests extending over certain designated periods of time, and that the results of such tests demonstrate that the colors used in respondent's products will not fade or change; that such colors, in fact, are impervious to the effects of sunlight.

In truth and in fact, the colors of respondent's products are not superior in all cases to the colors used for other similar products. Respondent's colors are not impervious to the effect of sunlight, nor will such colors resist change for the periods of time designated by

respondent. In truth and in fact, the colors of respondent's products fade appreciably, when subjected to authentic tests for periods of time which are much shorter than the periods designated by respondent.

PAR. 4. A further practice of the respondent is the use of the trade names "Lintex" and "Siltex" to designate or describe certain of his products.

Through the use of the word "Lintex" the respondent represents that the products so designated are made of linen, when in truth and in fact such products contain no linen, but are composed entirely of cotton. The term "linen" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit, fabrics made from flax. Linen products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for linen fabrics over fabrics made of cotton.

Through the use of the word "Siltex" the respondent represents that the products so designated are made of silk, when in truth and in fact such products contain no silk, but are made of cotton and rayon. The term "silk" for many years last past has had and now has in the minds of the purchasing public 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, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for products made of silk over products made of cotton and rayon.

Rayon is 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 silk worm.

Through the use of the aforesaid trade names to designate his said products, and through his failure to disclose that products designated "Siltex" are in fact composed in part of rayon, the respondent has placed in the hands of uninformed or unscrupulous jobbers and retail dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 5. The use by the respondent of the acts and practices herein alleged 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 the respondent's products possess qualities which

they do not in fact possess and that such products are made of certain designated fibers or materials, when such is not the fact. As a result of such erroneous and mistaken belief, the purchasing public has been induced to purchase substantial quantities of respondent's products, and thereby trade in such products has been diverted unfairly to the respondent from his competitors. In consequence, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. 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 in commerce 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 the 26th day of April 1940, issued and subsequently served its complaint in this proceeding on said respondent, Max Krauss, an individual, trading as American Cord & Webbing Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of said act. On the 6th day of June 1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by respondent's counsel, Nathan & Nathan, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, 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 said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Max Krauss, is an individual trading as American Cord & Webbing Co., with his place of business at 394 Broadway, in the city of New York, State of New York. Respondent is now, and for many years last past has been, 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 cloth tape or web used in connection with the manufacture of venetian blinds. Respondent causes, and has caused, such tape or web, when sold, to be shipped from his place of business in the State of New York to purchasers in other States of the United States, and in the District of Columbia.

In the course and conduct of his business, respondent has been and now is, in competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution of webbing used in connection with the manufacture of venetian blinds, in commerce between and among the various States of the United States, and in the District of Columbia.

Respondent sells and distributes this tape or web to manufacturers or wholesalers of venetian blinds, for use in the making of such blinds. Respondent does not sell tape or webbing to retailers or to the general consuming public.

PAR. 2. Among the products sold and distributed are a variety of tapes which are colored by dyes known as Vat Dyes. In connection with this line of products respondent distributes among prospective customers, among other things, an advertising folder to which are attached samples of respondent's tapes showing the various colors in which such tapes may be obtained. On said folder respondent makes the following representations:

VAT DYES are the FASTEST Dyes known to science—made to resist the color destroying action of sunlight, washing, dry cleaning, etc.

THE PERMANENCE OF VAT DYES is due both to their natural characteristics and to the processes by which they are applied. They become soluble after chemical treatment. Later they are made insoluble through oxidation, which makes the color a permanent part of the fabric.

LABORATORY TESTS prove superior fastness of vat dyes.

Guaranteed Fastest to Sunlight * * * and Other Color Destroying Elements.

Said folder contains no statement indicating that any of the colors portrayed are not vat dyes.

Through the use of the foregoing statements and others of similar import, and through such failure to disclose the facts with respect to said colors, all of said colors are represented as being produced by

Findings

32 F. T. C.

means of vat dyes, when, in fact, two of the said colors portrayed on said folder, to wit, "Chinese Red" and "Black," are not "Vat dye" colors, but are colors produced by other methods, the color "Chinese Red" being produced by a process known as the naphthol process, and the color "Black" being produced by a process known as the sulphur process.

PAR. 3. As illustrative of the purported fastness and durability of the dyes used to color his said products and of the purported superiority of such dyes over other dyes, the respondent has caused to be inserted in certain of his advertising material charts or tables, among and typical of which is the following:

COMPARATIVE FADE-OMETER *

Tests made on colors most likely affected by sunlight.

Direct	Or any Other Ordinary	Yarn Dyed Vat Colors used in Lintex Brand Venetian Blind Web.
Chocolate		Chocolate
Exposed 50 hours		Exposed 240 hours
Result—decided fade		Result—no appreciable sign of fading
Mulberry		Mulberry
Exposed 60 hours		Exposed 250 hours
Result—change in color		Result—no change in color
Cream		Cream
Exposed 50 hours		Exposed 200 hours
Result—faded		Result—the same color retained.
Navy Blue		Navy Blue
Exposed 40 hours		Exposed 240 hours
Result—faded streaky light blue		Result—color uniformity retained

Similar tests have been made on all of the other colors with comparable results.

* FADE-OMETER is an instrument producing artificial sunlight, stronger than midday sun.

Through the use of the foregoing statements, and others of similar import not set-out herein, it is represented by respondent that the colors of his products are superior in fastness and durability to other colors used for similar purposes; that said products have been subjected to certain tests extending over certain designated periods of time, and that the results of such tests demonstrate that the colors used in said products will not fade or change; that such colors, in fact, are impervious to the effects of sunlight. In fact, as shown by tests made at the instance of the Federal Trade Commission, the colors of respondent's products are not superior in all cases to the other colors used for similar purposes and said colors are not impervious to the effects of sunlight nor will such colors resist change for the periods

of time designated by respondent, as the colors of said products fade appreciably, when subjected to sunlight, for periods of time which are much shorter than the periods designated by respondent.

PAR. 4. In the sale and distribution of its products respondent uses as the trade name for some of said products the coined word "Lintex."

The web or tape branded "Lintex" is made of cotton and contains no linen. The term "linen" for many years last past, has had, and now has, in the minds of the purchasing public a definite and specific meaning, to wit, fabrics made from flax. Linen products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for linen fabrics over fabrics made of cotton. Through the use of the word "Lintex," a substantial portion of the purchasing public would understand that the products so designated are made of linen, when, in fact, such products contain no linen but are composed entirely of cotton.

PAR. 5. In the sale and distribution of its products respondent uses as a trade name for some of its products the coined word "Siltex."

The web or tape branded "Siltex" is made of cotton and rayon and contains no silk. The term "silk" for many years last past, has had, and now has, in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silk worm. Silk products for many years have held, and still hold, the esteem and confidence of the public for their preeminent qualities, and there is a marked preference on the part of a substantial portion of the purchasing public for products made of silk over products made of cotton and rayon.

Rayon is 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 and for silk, the product of the cocoon of the silk worm.

Through the use of the word "Siltex" a substantial portion of the purchasing public would understand that the products so designated are made of silk, when, in fact, as aforesaid, such products contain no silk but are composed entirely of cotton and rayon.

PAR. 6. Through the use of the aforesaid trade names to designate said products, and through failure to disclose that the products designated "Siltex" are in fact composed in part of rayon, means and

Order

32 F. T. C.

instrumentalities have been placed in the hands of uninformed or unscrupulous jobbers and retail dealers whereby such jobbers and dealers are enabled to mislead and deceive a substantial number of the members of the purchasing public as to the fiber content of said products.

As a result of erroneous and mistaken beliefs on the part of the purchasing public, induced by the representations of the respondent hereinbefore detailed, the purchasing public has been induced to purchase substantial quantities of respondent's products, with the result that trade has been diverted unfairly to the respondent from competitors engaged in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of 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 the respondent, and the stipulation as to the facts entered into between Nathan & Nathan, counsel for the respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Max Krauss, an individual, trading as American Cord & Webbing Co., his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of tape or web for Venetian Blinds, do forthwith cease and desist from—

1. Representing that respondent's products are dyed with vat dyes when they are not in fact so dyed.

2. Representing that the colors of respondent's products will not change color or will not fade, or are impervious to the effects of sunlight, or representing that the colors of such products will successfully resist the effects of sunlight for specified periods of time when such products do in fact fade or change color by reason of such exposure.

3. Using the term "Lintex" to any way describe or refer to a product which is not composed of linen, or otherwise representing that products which are not composed of linen are linen or contain linen.

4. Using the term "Siltex" to any way describe or refer to a product which is not composed of silk, or otherwise representing that products which are not composed of silk are silk or contain silk.

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

6. Representing that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

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

IN THE MATTER OF
W. E. ROBINSON & COMPANY, INC.

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

Docket 4294. Complaint, Aug. 30, 1940—Decision, Jan. 10, 1941

Where a corporation engaged in Maryland as field broker in acting as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and in effecting in some instances, as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by it to assist it in making such sales and in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by it through aid of such corresponding or local brokers or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent of the brokerage fee or commission paid by sellers to it for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

- (a) Granted and allowed in connection with the sales of such commodities in interstate commerce effected by it for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting usually to 50 percent of the brokers' fee or commission paid by the sellers to it for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases or commodities from sellers as above set forth, said corporation violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporation engaged in business of purchasing canned fruit and vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective States in which they were located across State lines, either to said corporation or pursuant to instructions and directions from it, to the respective purchasers to whom such commodities had been resold by said corporation, and in also making many purchases of such commodities for its own account as aforesaid from sellers located in State of Maryland, by which sellers, pursuant to instructions and directions from said corporation, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by it;