

IN THE MATTER OF
GROUP SALES CORPORATION

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

Docket 2922. Complaint, Sept. 17, 1936—Decision, Jan. 14, 1941

Where a corporation engaged, as jobber or wholesaler, in interstate sale and distribution of silk and rayon piece goods, in competition with others engaged in sale and distribution in commerce of similar products, and including many who do not in any way misrepresent the quality, character or origin thereof—

Represented that the piece goods sold by it consisted entirely of "name goods," or materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, and that such goods were purchased or obtained by it direct from manufacturers thereof, and were composed entirely of new, wanted, up-to-date, stylish and seasonable fabrics, through such statements, in circulars distributed among its retail customers and prospective customers in the various States, and advertisements of its said products, as "HOLD A NAME SALE AND GET THE BENEFIT OF MILLIONS OF DOLLARS WORTH OF NATIONAL ADVERTISING!," "EVERY WOMAN KNOWS THESE FAMOUS MAKERS," followed by names of 10 manufacturers who were widely and favorably known among the retail trade and buying public, along with statement "and many other equally well known—SILKS AND ACETATES," "We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted SILKS and ACETATES * * *". Consisting of many of the above Nationally Advertised Qualities * * *," " * * * We buy surplus stocks, sample pieces and short warps from mills, commission houses and dress manufacturers. * * *," "We * * * get the most up-to-date, stylish, perfect fabrics * * *," and "Only New, Wanted, Stylish Merchandise," etc.;

Facts being products thus advertised by it did not consist wholly of materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, substantial part thereof, on the contrary, consisted of materials having no recognized merit or quality and made by manufacturers who did not have such a reputation, most of its said merchandise was not purchased direct from manufacturer, but purchased or obtained from commission merchants, dress manufacturers, garment makers and jobbers, the "Acetates" were in fact rayon fabrics, and substantial part of merchandise advertised and sold by it was not new, wanted, up-to-date, stylish or seasonable, but substantial portion thereof, on the contrary, consisted of discontinued numbers and odd lots and merchandise of second or inferior grade;

With tendency and capacity, through such false and misleading statements and representations in designating or describing its said merchandise, to mislead substantial number of retail merchants into erroneous belief that such representations were true, and with result, as direct consequence of such belief, induced as above set forth, that number of retail dealers purchased

substantial volume of silk and rayon piece goods sold by it, and that trade was diverted unfairly to it from its competitors, who truthfully advertise and represent the quality, character and origin of their products; to the substantial injury of competition in commerce:

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.

Before *Mr. Miles J. Furnas*, *Mr. John J. Keenan*, and *Mr. Robert S. Hall*, trial examiners.

Mr. Morton Nesmith for the Commission.

Bangser & Kaufmann, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Group Sales Corporation, a corporation, hereinafter referred to as respondent, is now and has been using unfair methods of competition in commerce as "commerce" is defined in 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. The respondent, Group Sales Corporation, a corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now, and for more than 1 year last past has been, engaged in business as a jobber or wholesaler in the sale and distribution of silk and rayon piece goods, in interstate commerce. It causes its said products, when sold, to be shipped and distributed from its place of business in the city and State of New York to the purchasers thereof located in divers of the other States of the United States of America, and the District of Columbia. In the course and conduct of its business, said respondent, Group Sales Corporation, is, and has been at all times herein referred to, in competition with other corporations, individuals, firms and partnerships likewise engaged in the sale and distribution in interstate commerce of like and similar products to those of the respondent above mentioned and set-out.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, Group Sales Corporation, heretofore purchased, and still purchases, from various sources supplies of silk and rayon piece goods, only a portion of which was "name goods," i. e., materials of generally recognized merit and quality, made and

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nationally advertised by manufacturing concerns of wide and well established reputation, well and favorably known to the trade and purchasing public.

In soliciting the sale of its products in interstate commerce, the respondent, Group Sales Corporation, distributed, and still distributes, among its retail customers and prospective customers located in various States, certain circulars bearing the following caption:

HOLD A NAME SALE
AND GET THE BENEFIT OF MILLIONS OF
DOLLARS WORTH OF NATIONAL ADVERTISING!

and said circulars contained also the following:

EVERY WOMAN KNOWS THESE FAMOUS
MAKERS.

Thereafter the following well known names of manufacturers who enjoy wide and favorable reputations among the retail trade and the buying public, were listed and set-out in said circulars, to wit:

H. R. Mallinson
Cheney Bros.
Belding
Schwarsenbach
Susquehanna
C. K. Eagle
Bloomsburg
Stehli
Julliards
Duplan

said names of manufacturers, above set-out, being followed in said circulars by the following:

and many other equally well known
SILKS AND ACETATES.

In another certain circular of respondent which it distributed in interstate commerce among the retail dealers in the several States of the United States of America, the respondent made the following offer and inducement to the retail trade, to wit:

We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted SILKS and ACETATES * * * Consisting of many of the above Nationally Advertised Qualities * * *

In still another circular of respondent distributed in interstate commerce, it was stated:

You surely would be interested if you could buy beautiful silks and acetates at a fraction of their regular prices. HERE'S WHY—We buy surplus 'stocks, sample pieces and short warps from mills, commission houses and dress manu-

facturers. We are, at all times, ready to lay out large sums of spot cash and in that way we buy at ridiculous prices. These Bargains We Pass On to You.

And in other circulars so distributed by the respondent in interstate commerce as aforesaid, the following statement is made:

We take advantage of weaknesses in the market and get the most up-to-date, stylish, perfect fabrics at a fraction of their wholesale prices. **THESE BARGAINS WE PASS ON TO YOU.**

In the conduct of its said business the said respondent, Group Sales Corporation, advertised, sold and offered for sale in interstate commerce, its said products by means of the following inducements and representations:

Only New, Wanted Stylish Merchandise;
All New, This Season's Fabrics;
Latest Wanted Fabrics;
Perfect—New—Stylish Silks and Acetates;

and concerning its said products the respondent made and makes the following statements:

All Our Merchandise Is Guaranteed Perfect—New—Up-To-The-Minute, Wanted Fabrics.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the products sold by the respondent. In all of its advertising literature, respondent represents, through the statements and representations herein set-out and other statements of similar import and effect, that the silk and rayon piece goods sold by it are composed entirely of so-called "name goods" and consist of materials of generally recognized merit and quality made and nationally advertised by manufacturing establishments of wide and favorable reputation, well and favorably known to the trade and purchasing public; that said silk and rayon piece goods were purchased or obtained direct from the manufacturer or manufacturers of said merchandise and that said piece goods are composed entirely of new, wanted, up-to-the-minute or up-to-date, stylish, seasonable fabrics.

PAR. 3. In truth and in fact said products so advertised, sold and offered for sale by respondent in interstate commerce did not consist wholly of so-called "name goods," did not consist of material of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation, well and favorably known to the trade and purchasing public, but to the contrary, a substantial part of the merchandise of respondent, so represented, sold, offered for sale and advertised in interstate commerce consisted in merchandise other than "name goods," and in like

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manner a substantial portion of said merchandise was not purchased or otherwise obtained by the said respondent direct from the manufacturer or manufacturers thereof, but was obtained from other jobbers and garment makers who did not manufacture said products so advertised, represented, sold and offered for sale in interstate commerce by respondent. In like manner a substantial part of the merchandise so advertised, represented, sold and offered for sale by respondent in interstate commerce, was not truthfully and properly described, when said merchandise was represented or referred to as being composed only of new, wanted, up-to-the-minute or up-to-date, stylish, seasonable fabrics. In truth and in fact, a substantial part of such merchandise was "seconds" or "left-overs" from garment manufacturers' goods.

PAR. 4. There are among respondent's competitors many who do a wholesale and jobbing business in silk and rayon piece goods who do not, in any way, misrepresent the quality or character of their respective products but who properly and truthfully advertise and represent the character and nature of the merchandise which they sell.

PAR 5. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its merchandise, in offering for sale and selling said merchandise, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a portion of the retail merchants who buy respondent's piece goods into the erroneous belief that all of said representations are true. As a direct consequence of the mistaken and erroneous beliefs, induced as hereinabove set out, a number of retail dealers have purchased a substantial volume of the silk and rayon piece goods sold by the respondent with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of wholesaling and jobbing silk and rayon piece goods who truthfully advertise and represent the quality, character and nature of their products. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the States of the United States.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent of section 5 of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 17, 1936, issued and subsequently served its complaint in this proceeding upon the respondent, Group Sales Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by Adolph Bangser, attorney for the respondent, before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint; 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: The respondent, Group Sales Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now, and for more than 5 years last past has been, engaged in business as a jobber or wholesaler in the sale and distribution of silk and rayon piece goods. It causes its said products, when sold, to be shipped and transported from its place of business in the city and State of New York to the purchasers thereof located in various other States of the United States of America, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of its business, said respondent, Group Sales Corporation, is, and has been at all times herein referred to, in competition with other corporations, and with individuals, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of products similar to those of the respondent.

PAR. 2. In the course and conduct of its business as aforesaid,

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and for the purpose of inducing the purchase of its products, the respondent has distributed, and still distributes, among its retail customers and prospective customers located in various States, certain circulars bearing the following caption:

HOLD A NAME SALE
AND GET THE BENEFIT OF MILLIONS OF
DOLLARS WORTH OF NATIONAL ADVERTISING!

and said circulars contained also the following:

EVERY WOMAN KNOWS THESE FAMOUS MAKERS.

Thereafter the following well-known names of manufacturers who enjoy wide and favorable reputations among the retail trade and the buying public, were listed and set out in said circulars, to-wit:

H. R. Mallinson,
Cheney Bros.,
Belding,
Schwarsenbach,
Susquehanna,
C. K. Eagle,
Bloomsburg,
Stehli,
Julliards,
Duplan,

such names being followed in said circulars by the following:

and many other equally well known .
—SILKS AND ACETATES.

In another circular of respondent which it distributed among retail dealers the following appeared:

We will ship you a GROUP of 1,000 YARDS of High-type, New, Stylish, Wanted
SILKS and ACETATES * * * Consisting of many of the above Nationally
Advertised Qualities * * *

In still another circular of respondent it was stated:

You surely would be interested if you could buy beautiful silks and acetates at a fraction of their regular prices. HERE'S WHY—We buy surplus stocks, sample pieces and short warps from mills, commission houses and dress manufacturers. We are, at all times, ready to lay out large sums of spot cash and in that way be buy at ridiculous prices. These Bargains We Pass On to You.

And in other circulars so distributed by the respondent, the following statement is made:

We take advantage of weaknesses in the market and get the most up-to-date, stylish, perfect fabrics at a fraction of their wholesale prices. THESE BARGAINS WE PASS ON TO YOU.

In the conduct of its business the respondent also advertised its products by means of the following representations:

Only New, Wanted, Stylish Merchandise;
All New, This Season's Fabrics;
Latest Wanted Fabrics;
Perfect—New—Stylish Silks and Acetates;
All Our Merchandise is Guaranteed Perfect—New—Up-To-The-Minute, Wanted Fabrics.

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the products sold by the respondent. Through the use of such statements and representations and other statements of similar import and effect, the respondent represents that the piece goods sold by it consist entirely of so-called "name goods", that is, materials of generally recognized merit and quality made and nationally advertised by manufacturing establishment of wide and favorable reputation; that said piece goods were purchased or obtained by respondent direct from the manufacturers of said merchandise, and that said piece goods are composed entirely of new, wanted, up-to-date, stylish, seasonable fabrics.

PAR. 3. The Commission finds that the products so advertised by the respondent did not consist wholly of materials of generally recognized merit and quality, made and nationally advertised by manufacturing establishments of wide and favorable reputation. On the contrary, a substantial part of such merchandise consisted of materials having no recognized merit or quality and made by manufacturers who do not have a wide or favorable reputation. Most of respondent's merchandise was not purchased direct from the manufacturer thereof but was purchased or obtained from commission merchants, dress manufacturers, garment makers and jobbers. The fabrics advertised and described by use of the term "acetates" were in fact rayon fabrics.

The Commission further finds that a substantial part of the merchandise advertised and sold by the respondent was not new, wanted, up-to-date, stylish or seasonable merchandise. On the contrary, a substantial portion of respondent's merchandise consisted of discontinued numbers and odd lots, and merchandise of second or inferior grade.

PAR. 4. The Commission further finds that many of respondent's competitors herein referred to do not in any way misrepresent the quality, character or origin of their products.

PAR. 5. The Commission further finds that each and all of the false and misleading statements and representations, as set out herein, made

by the respondent in designating or describing its merchandise, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial number of retail merchants into the erroneous belief that said representations are true. As a direct consequence of such mistaken and erroneous belief, induced as hereinabove set out, a number of retail dealers have purchased a substantial volume of the silk and rayon piece goods sold by the respondent, with the result that trade has been unfairly diverted to the respondent from its competitors who truthfully advertise and represent the quality, character, and origin of their products. As a result thereof, substantial injury has been done and is being done by respondent to competition in commerce among and between the States of the United States, and in the District of Columbia.

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 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 respondent, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Group Sales Corporation, 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 silks and rayons, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Representing, or aiding retailers in representing, through the device of so-called "name-sales" of groups of piece goods, or through any other means or device, or in any manner, that groups of its silk and rayon piece goods constitute "name-goods" unless all, or the majority, of such piece goods included in such groups were actually produced and widely advertised by a nationally known manufacturer, and in

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the event such groups include pieces not so advertised or produced, then disclosure of such fact must be made.

2. Representing as new, wanted, up-to-date, stylish or seasonable, any fabric which is not such in fact.

3. Representing that the quality, character or origin of any fabric is other than the actual quality, character, or origin of such fabric.

4. Representing that any product has been obtained by the respondent direct from the manufacturer of such product, when such product has not in fact been so obtained.

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

B. SOLOMON, TRADING AS APEX LAMP WORKS

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

Docket 3629. Complaint, Oct. 11, 1938—Decision, Jan. 15, 1941

Where an individual engaged in manufacture of her "Ampliflector" lamp shade or reflector, and in interstate sale and distribution thereof in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of similar products intended for use in connection with illumination, and including many who truthfully advertise and represent the merits and efficiency thereof; in advertising her said "Ampliflector" in newspapers and magazines of general circulation, and through booklets, folders, pamphlets, circular letters, and other forms of advertising literature distributed in part directly to members of purchasing public in the various States, and furnished in part to customers located throughout the United States for distribution among the purchasing public—

- (a) Represented that said reflector was a new and amazing light discovery which cut light bills from 25 percent to 50 percent, and would pay for itself quickly out of actual savings, and that it constituted an advancement in the science of light reflectors and provided extreme concentration of light rays, with result that, attached to a small bulb, volume of illumination produced would be equal to that obtained with a larger one without the reflector, and with user saving difference between cost of smaller and larger bulb;

Facts being her said product was not an amazing discovery nor advancement in science concerned, as above claimed, but was similar in shape, design, size, and efficiency to reflectors of various shapes and sizes long sold and distributed in all the States, her reflector did not reduce lighting costs, but, like many others, was instrumental in directing and increasing light on a given working plane, and was merely adaptation of well-known principle of light diffusion, and, in matter of concentration of light rays, fell substantially short of that supplied, for example, by automobile and aviation headlights; and

- (b) Represented that she had made tests which proved that intensity of electric light from bulbs was increased by some 30 to 600 candlepower through use of her said reflector, and that use of diamond design in reflecting surface of said product amplified light produced in the bulb by criss-crossing every ray in every direction, and that same bulb would furnish more light with her said product than it would with any competing reflector, and that her said product gave better quality of light by changing colors thereof and bringing out contrast of colors in any object;

Facts being use by her in aforesaid connection of light intensity tests table was misleading and deceptive in that Weston light meter does not measure, as represented by her, candlepower, fixed candlepower output of a bulb is not affected by use of her reflector or of any other, and bulb used with her product would furnish no more light than when used with any other similar type reflector or shade, and, as aforesaid indicated, light is not