

IN THE MATTER OF
RABHOR CORPORATION

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

Docket 3619. Complaint, Oct. 3, 1938—Decision, Feb. 28, 1941

Where a corporation engaged in manufacture of men's robes, jackets, lounge suits, and other wearing apparel, and in competitive interstate sale and distribution thereof; in advertisements which it furnished retailers for insertion in newspapers and other publications of interstate circulation, and through circulars with colored depictions of certain of its products which it furnished retailers for distribution to purchasers and prospective purchasers and on tags affixed to certain products—

- (a) Represented, directly and by inference, that its garments were made entirely of silk, product of the cocoon of the silkworm, through use of words "silk" and "satin," and through such typical statements as " * * * silk lined jacket" (or robe), "Silk warp brocade. Satin lined," and " * * * made from Suskana silk. Pure silk lined";

Notwithstanding fact that garments were not made entirely of the esteemed and preferred product of cocoon of silkworm, as long understood by consuming and purchasing public from words "silk" and "satin," but were composed of various combinations and mixtures of cotton, rayon, silk, and other fibers, and, as to certain of products in question, were made from material composed of 70 percent cotton and 30 percent silk; and

- (b) Failed to disclose such content of rayon, which, with appearance and feel of silk, is by the purchasing public practically indistinguishable therefrom, with result of concealing fact that garments concerned were made in whole or in part of chemical fiber or fabric aforesaid;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and of placing in the hands of uninformed and unscrupulous retailers means and instrumentality whereby they might, and did, mislead and deceive such public into erroneous belief that said garments were made wholly of silk, and of thereby diverting trade unfairly to it from competitors who truthfully advertised their respective merchandise:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort and *Mr. Robert Mathis, Jr.*, for the Commission.

Mr. Erwin Feldman, 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 Rabhor Corporation, 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. Respondent, Rabhor Corporation, 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 1450 Broadway, in the city of New York, State of New York.

Respondent is now, and for several years last past has been, engaged in the business of manufacturing men's robes, jackets, lounge suits, and other wearing apparel for men, and in the sale and distribution thereof.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

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

Respondent is now, and at all time herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's robes, jackets, lounge suits, and other wearing apparel for men, 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 its aforesaid business, respondent, in soliciting the sale of, and selling, its merchandise in such commerce, caused, and now causes, advertising matter to be inserted in newspapers and other publications having a circulation between and among the several States of the United States. In certain of said advertisements respondent has made various statements purporting to be descriptive of the nature, quality, and character of its merchandise, among which are the following:

Suskana Silk Lined Jacket.

Suskana Silk Lined Robe.

Silk Warp Brocade, Satin Lined.

Distinguished tailoring combines with the silk warp brocade fabric to make this a robe he'll never forget. Satin lined.

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Certain garments are also labeled :

This garment made from Suskana Silk. Pure silk lined.

Respondent sells its various garments under the trade name "Suskana" and other trade names.

Respondent also furnished to dealers purchasing its garments advertising copy containing statements similar to those above quoted, for use in local newspapers.

All of such statements, together with similar statements appearing in respondent's advertising literature and on the labels of its garments, purport to be descriptive of its merchandise and of the material out of which it is made. In all of its advertising literature and through labels and other means, respondent, directly or by inference, through the statements and representations herein set out, and other statements of similar import and effect, represents that its garments are made of silk, the product of the cocoon of the silkworm.

PAR. 3. The representations made by respondent with respect to the materials out of which its garments are made are false, misleading, and untrue. In truth and in fact the said garments are not made of silk, the product of the cocoon of the silkworm.

The true facts are that said garments are made of cotton, rayon, and silk. None of the garments contain a predominance of silk by weight.

The representations above set forth were, and are, false and misleading in that said garments so represented, designated, and referred to were not described as being in whole or in part rayon or cotton, as the case may be, and in that the word "rayon" was not used in said advertising in immediate connection and conjunction with said descriptive words and such representation. Where the word "rayon" appeared in respondent's advertising it indicated the presence of this fabric in other garments but not in the garments advertised as herein set forth. Such representations, together with the failure to so describe the materials of which said garments were made, had and have the tendency, capacity, and effect of concealing the fact that such garments were and are made, in whole or in part, of rayon or cotton, as the case may be, when it was, and is, the duty of the respondent in any circumstances to make disclosure of the fact that such garments were and are composed, in whole or in part, of rayon by the use of the word "rayon" in immediate connection with said descriptive words and in such a way and manner as to apprise and inform the purchasing and consuming public that such garments were and are composed, in whole or in part, of rayon, as the case may be.

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. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fiber. The words "satin" and "crepe" or words of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric or fiber in connection with the designation or description of men's robes, jackets, or other wearing apparel for men, have been for a long time, and still are, associated in the minds of the public with the 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 chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable from silk.

PAR. 5. There are among respondent's competitors many who sell and distribute men's robes, jackets, lounge suits, and other wearing apparel for men, who do not in any way misrepresent the material out of which their garments are made.

PAR. 6. Each and all of the aforesaid false and misleading statements and representations made by the respondent in describing its robes, jackets, lounge suits, and other wearing apparel for men, as hereinabove set out, and the failure to truthfully describe the materials of which said garments were made as aforesaid, have a tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. The use of said representations and statements also place in the hands of the retail dealers a means and instrumentality whereby they mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk, with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their respective merchandise. As a consequence thereof, 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. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and to respondent's competitors, and constitute unfair methods of competition 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 October 3, 1938, issued, and subsequently served, its complaint in this proceeding upon respondent, Rabhor 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 James L. Fort, attorney for the Commission, respondent being represented by Erwin Feldman, Esq. (no testimony being offered in opposition to the complaint), before Edward E. Reardon, an examiner 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, brief in support of the complaint (respondent not having filed brief), and oral arguments of Robert Mathis, Jr., attorney for the Commission, and Erwin Feldman, Esq., attorney for respondent; 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, Rabhor Corporation, 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 1450 Broadway in the city and State of New York. Respondent is now and for several years last past has been engaged in the business of manufacturing men's robes, jackets, lounge suits, and other wearing apparel for men, and in the sale and distribution thereof.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to various purchasers thereof located in other States of the United States and in the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade in said merchandise sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals,

firms, and partnerships engaged in the sale and distribution of men's robes, jackets, lounge suits, and other wearing apparel for men 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, respondent in soliciting the sale of and selling its merchandise in commerce has caused and now causes various advertising matter to be furnished to retail dealers for insertion in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia. In addition to the foregoing advertising, respondent furnishes to retail dealers various circulars with lithographed colored pictorial representations of certain of its products for distribution to purchasers and prospective purchasers of respondent's products. In certain of said advertisements which appeared with pictorial representations of respondent's products aforesaid respondent has made various statements purporting to be descriptive of the quality, character, and fabric content of its merchandise among which the following are typical:

Suskana silk lined jacket.

Suskana silk lined robe.

Silk warp brocade. Satin lined.

Distinguished tailoring combined with silk warp brocade fabric to make this a robe he'll never forget. Satin lined.

DeLuxe Suskana satin lined robe of luxurious brocade * * *.

On certain of its robes, the respondent affixed various tags containing among other printed matter the following:

This garment is a genuine Rabhor robe, tailored in exclusive Suskana jacquard. Pure silk lined.

This garment made from Suskana silk. Pure silk lined.

All of such statements, together with other statements of similar effect which appeared in respondent's advertising literature, on the circulars furnished to retailers for distribution to the purchasing public, and on tags and labels affixed to its garments, purport to be descriptive of its merchandise and of the nature and quality of the fabrics out of which such merchandise is made. By the means set forth above respondent directly and by inference represents and has represented that its garments are made entirely of silk, the product of the cocoon of the silkworm.

PAR. 3. The representations so made by respondent with respect to the nature and quality of the fabrics out of which its garments are made are false, misleading, and untrue. In truth and in fact the said garments so advertised were not made entirely of silk, the product

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of the cocoon of the silkworm, but are made of various combinations and mixtures of cotton, rayon, silk, and fibers other than silk.

A portion of respondent's products were manufactured from a material composed of 70 percent cotton and 30 percent 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 and are preferred for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of treatment and weaving of silk fiber. Among such terms is the term "satin."

The word "satin" and other terms of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric of fiber, in connection with the designation or description of garments, as distinguished from the weave used in the fabric, have been for a long time, and still are, associated in the minds of the purchasing public with the 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 alone.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable therefrom.

The use by respondent of the representations hereinabove set forth, together with the failure to disclose the rayon content of the fabrics from which said garments were made, has had and now has the tendency, capacity, and effect of concealing the fact that such garments were and are made in whole or in part of rayon.

PAR. 5. The Commission finds that there are among respondent's competitors a number who sell and distribute men's robes, jackets, lounge suits, and other wearing apparel for men, who do not in any way misrepresent the kind, quality, or fabric content of the material out of which their garments are made.

PAR. 6. The aforesaid false and misleading statements and representations used by the respondent in describing its robes, jackets, lounge suits, and other wearing apparel for men, as hereinabove set out, and the failure to truthfully describe and designate the kind or the fabric content of the materials of which said garments were made, have had the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. By the use of said

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representations and statements and the practice of failing to disclose the rayon content of its products, respondent places in the hands of uninformed and unscrupulous retail dealers a means and instrumentality whereby they may, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk, with the result that trade has been diverted unfairly to respondent from various competitors who truthfully advertise their respective merchandise.

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 Edward E. Reardon, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint (no testimony being offered in opposition thereto), brief filed in support of the complaint and oral arguments by Robert Mathis, Jr., counsel for the Commission, and by Erwin Feldman, counsel for the respondent, 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, Rabhor 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 its men's robes, jackets, lounge suits, and other wearing apparel, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "silk" or any other word or term descriptive of silk to describe, designate, or in any way refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however,* That in the case of fabrics or products composed in part of silk and in part of other fibers such term or similar terms may be used as descriptive of the silk content if there is used in immediate connection or conjunction

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therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

2. Using the unqualified term "satin" or any other descriptive term of similar import or meaning indicative of silk to describe, designate, or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however,* That when said word or descriptive term is used truthfully to designate or describe the type of weave, construction, or finish, such word shall be qualified by using in immediate connection and conjunction therewith, in letters of at least equal size or conspicuousness, a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

3. Advertising, offering for sale, or selling fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing, by the use of the word "rayon," the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon and in part of other fabrics or materials, such fabrics or materials shall be designated in immediate connection or conjunction with the word "rayon" in letters of at least equal size and conspicuousness which shall truthfully describe and designate each constituent fiber or material thereof.

4. Representing in any manner that fabrics or products offered for sale or sold by it contain silk in greater quantity than is actually the case.

5. Representing in any manner or by any means 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 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.

Syllabus

IN THE MATTER OF

IVAN D. HUSSEY, TRADING AS HUSCO MANUFACTURING COMPANY, THE HUSSEY MANUFACTURING & DISTRIBUTING COMPANY, ETC.

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

Docket 4386. Complaint, Nov. 23, 1940—Decision, Feb. 28, 1941

Where an individual engaged in interstate sale and distribution of hosiery, knives, fountain pens, and other articles in various assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and included, as illustrative of kind of assortments and schemes, 24 pairs of men's hose and a push card, for use in their sale and distribution to purchasers under a plan, announced thereon, by which customer paid from 1 cent to 25 cents a pair, dependent upon particular number he secured by chance—

- (a) Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers, they were exposed and sold to purchasing public in accordance with such sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with sales plan involving game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use method involving game of chance or sale of a chance to win by chance or one contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said sales plan and element of chance involved therein, and were thereby induced to buy and sell his products in preference to those of his said competitors who do not use same or equivalent methods, thereby unfairly diverting trade in commerce from them to him, to the substantial injury of competition in commerce; and

- (b) Represented through use of word "Manufacturing" in various trade names employed by him, and otherwise, that he owned or operated a factory in which his products were made, and that he was the manufacturer of all of the products sold by him, facts being that, excepting one only, such products were purchased from others and were not made in a plant owned, operated, or controlled by him;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers by causing them mistakenly to believe that he was such a manufacturer, preferentially dealt with directly by substantial portion of purchasing public as securing them, in their belief, lower prices and other advantages not otherwise obtainable, and to purchase said articles from him as owner, operator, or controller of plant where same were made: