

Complaint

IN THE MATTER OF

RUTH GOWNS, INC.

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

Docket 4426. Complaint, Dec. 20, 1940—Decision, Mar. 5, 1941

Where a corporation engaged in manufacture of various grades and types of dresses and other wearing apparel for women, and in interstate sale and distribution of such products, including various garments made in whole or in part of rayon, which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, and, when manufactured as aforesaid and not designated as rayon, is believed and accepted by a portion of purchasing public as being silk, product of cocoon of silkworm; in connection with sale in commerce of its said last-named products or garments—

Made no disclosure by tag, label, or advertising, or otherwise than in invoicing, or at all in some instances, of rayon content of said garments which, composed entirely of said chemically manufactured fiber or fabric, but with appearance and feel of silk, were accordingly sold through wholesalers, jobbers and retailers to purchasing public with no disclosure of rayon content thereof;

With result of placing in hands of uninformed or unscrupulous jobbers, wholesalers, and retailers means and instrumentality whereby they might deceive or mislead members of purchasing public into erroneous and mistaken belief that in purchasing aforesaid rayon garments they were buying those made from silk, and with tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that they were composed of silk, product of cocoon of silkworm, products of which have long been held in great public esteem and confidence for the preeminent qualities thereof, and with result, as consequence thereof, that number of consuming and purchasing public bought its said products in substantial volume:

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. Robert Mathis, Jr. for the Commission.

Wachtell, Manheim & Grouf, 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 Ruth Gowns, Inc., a corporation, hereinafter referred to as respondent, has violated

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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, Ruth Gowns, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

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

Respondent maintains and at all times mentioned herein has maintained a substantial 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. 3. In the course and conduct of its said business and for the purpose of inducing the purchase of its products, respondent has engaged in the practice of falsely representing the constituent fiber or material of which the dresses and other articles of wearing apparel for women sold and distributed by it, are made. Such representations are made by means of tags, labels, price lists, and invoices, as well as in various advertising material, through statements made by respondent's representatives to purchasers and prospective purchasers, and by respondent's failure to disclose the rayon content of, certain of its products.

PAR. 4. Among and typical of the acts and practices above described, the respondent represents certain of its fabrics as being composed of silk, the product of the cocoon of the silk worm. As an example of this practice, respondent places, or causes to be placed, on price lists and invoices, and in various advertising circulars and other printed matter the following terms or similar terms:

Tie Silk Taffeta Dress

and other words and terms indicative of silk, as descriptive of the material from which its products are made. By these means respondent represents that the fabrics so described are composed of silk,

the product of the cocoon of the silk worm, when in truth and in fact said products are composed in whole or in part of rayon.

Among and typical of respondent's practices of failing to disclose the fabric content of its products is the following: In a large portion of respondent's sales no indication of the fabric content of its products is made by tag, label, on invoices, in advertising, or by any other means. A large portion of respondent's products which have the appearance and feel of silk but are composed entirely of rayon are therefore sold through wholesalers, jobbers, and retail dealers to the purchasing public without any disclosure being made of the rayon content of said products.

PAR. 5. Over a period of many years the word silk has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as denoting the product of the cocoon of the silk worm. Silk products for many years have held and still hold great public esteem and confidence for their pre-eminent qualities. Silk fiber has long been woven into a variety of fabrics and a number of distinctive terms indicative of silk have been applied to the fabrics resulting from the different types of weaving of silk fiber. Among such terms is the word "taffeta." Dress goods and other items of women's wearing apparel designated, described and referred to by the term "taffeta," and other words indicative of silk have been for a long time and at the present time still are, associated in the public mind with fabrics made from silk, the product of the cocoon of the silk worm. Whenever the term "taffeta" or other words or terms indicative of silk are used to describe or refer to dress goods or other items of women's apparel, and such terms are not immediately accompanied by other terms or words adequately and accurately naming the fibers of which such materials are made, such terms are understood by members of the purchasing public as designating, describing, and referring to materials made from silk, the product of the cocoon of the silk worm.

PAR. 6. 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. By the use of the various practices herein set forth of designating respondent's products which are composed of rayon with names which are indicative of and associated by the purchasing public

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with silk products, and by the failure to indicate or disclose the rayon content of its products, the respondent places in the hands of uninformed or unscrupulous jobbers, wholesale dealers and retail dealers a means and instrumentality whereby said jobbers, wholesale dealers, and retail dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments or material manufactured from silk, when such garments or material are in fact manufactured and composed entirely of rayon.

PAR. 7. The use by the respondent of the aforesaid acts and practices, including the failure to disclose that its products are made of rayon, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products are composed of silk, the product of the cocoon of the silkworm. On account of this erroneous belief a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

PAR. 8. The aforesaid acts and practices of 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 the 20th day of December 1940, issued and subsequently served its complaint in this proceeding upon said respondent, Ruth Gowns, 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 January 10, 1941, 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's counsel, Wachtell, Manheim & Grouf, 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 the presentation of argument or the filing of briefs. Counsel for the 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, Ruth Gowns, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 498 Seventh Avenue in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

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

Respondent maintains and at all times mentioned herein has maintained a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Among the products so sold by respondent are various garments made, in whole or in part, of rayon.

PAR. 3. In the course and conduct of its said business and in connection with the sale of its rayon products, respondent has engaged in the following practice: in the rayon garments sold by respondent in commerce as described in paragraph 2 hereof no disclosure of the rayon content thereof was made by tag, label, in advertising, or otherwise except in invoicing and in some instances no such disclosure was made even in invoices.

PAR. 4. Respondent's above described products have the appearance and feel of silk but are composed entirely of rayon and therefore are sold through wholesalers, jobbers, and retail dealers to the purchasing public without any disclosure being made of the rayon content of said products.

PAR. 5. Over a period of many years the word silk has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as denoting the product of

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the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their pre-eminent qualities.

PAR. 6. 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 believed and accepted by a portion of the purchasing public as being silk, the product of the cocoon of the silkworm.

By the use of the practice herein set forth of failing to disclose the rayon content of such portion of its products, the respondent places in the hands of uninformed or unscrupulous jobbers, wholesale dealers, and retail dealers a means and instrumentality whereby said jobbers, wholesale dealers, and retail dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments manufactured from silk, when such garments are in fact manufactured and composed entirely of rayon.

PAR. 7. The Commission further finds that respondent's failure to disclose by tag or label that its rayon products are in fact made of rayon has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products are composed of silk the product of the cocoon of the silkworm. On account of this erroneous belief a number of the consuming and purchasing public purchases a substantial volume of respondent's products.

CONCLUSION

The foregoing 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's counsel Wachtell, Manheim & Grouf, 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 Ruth Gowns, Inc., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of its dresses and other wearing apparel for women in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, offering for sale, or selling fabrics, garments, or other products composed in whole or in part of rayon without clearly disclosing 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 fibers or materials, all of such fibers or materials, including the rayon, shall be set forth in immediate connection with each other in letters of at least equal size and conspicuousness and shall truthfully describe and designate each constituent fiber or material thereof.

2. 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.

IN THE MATTER OF

SCHUTTER CANDY COMPANY

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

Docket 3636. Complaint, Oct. 26, 1938—Decision, Mar. 6, 1941

Where a corporation engaged in the manufacture of candy, and in sale and distribution of various assortments, including as typical, assortment which (1) was composed of 126 small pieces of individually wrapped candy of uniform size and shape, of light color and vanilla flavor, 24 similar individually wrapped small pieces of dark color and chocolate flavor, and 25 5-cent candy bars, so packed that said 24 chocolate colored pieces were contained in small cardboard tray on top of others, with legend advising said 24 pieces were "For those who like chocolate * * *," and that segregation of said otherwise indistinguishable 24 pieces was lost through simple expedient of emptying tray into lower compartment, (2) was customarily sold by retailers under plan whereby purchaser selecting by chance, for cent paid, one of light colored pieces received such piece only, while person thus selecting one of chocolate colored pieces received one of said candy bars, and purchaser of last piece of candy received 25th or last bar and (3) was similar to other "draw" and "break and take" assortments, sold principally by retailers near schools to children, purchasers and consumers in substantial number of such type of candy, well-known in candy industry and readily recognized, in case of assortment in question, as a "draw" or "break and take" one, with no explanation required as to manner of operation by retailer—

Sold its said "Bingo Country Store Advertising Deal" assortments to jobbers and wholesalers, by whom they were distributed and sold to retailers as "draw" and "break and take" assortments, and by retail dealer purchasers were exposed and sold to purchasing public in accordance with sales plan or method above described, involving game of chance or sale of a chance to procure piece of candy at much less than the normal retail price, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with those who are opposed to, and do not use, same or any sales plan or method involving game of chance or sale of a chance to win or plan contrary to public policy of the Government, and are thereby put to competitive disadvantage;

With the result that many persons were induced by said plan or method and element of chance involved therein to buy and sell its products in preference to those offered and sold by its said competitors, and substantial trade in commerce was unfairly diverted to it from them:

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