

Complaint

IN THE MATTER OF

ABRAHAM FRIEDMAN AND SAMUEL FRIEDMAN, DOING
BUSINESS AS S. FRIEDMAN & SONS AND SUNRAY YARN
HOUSECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914*Docket 4274. Complaint, Aug. 27, 1940—Decision, Mar. 19, 1941*

Where two individuals engaged in interstate sale and distribution of knitting yarns, including two grades or types which had the general appearance of wool—

Represented, through use of legends "Sunray Cashmere Sport Yarn," "Sundry Cashmere Sport," "Cashmere Sport," and "Sunray Cashmere DeLaine," to designate and describe said yarns in labeling and advertising, that said products were made entirely from the hair of the cashmere goat, notwithstanding yarns in question were not products thus made, as long well known to purchasing public and held in high esteem by it, and as understood from term thus used, but contained, in one case no such fiber, and in case of said "Sunray Cashmere DeLaine" was composed of a mixture of hair of said goat and Australian wool;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to constituent fibers or materials of which said yarns were made, and to cause it to purchase substantial quantities thereof:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Donovan Divet for the Commission.

Mr. Louis Fineman, of New York City, for respondents.

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 Abraham Friedman and Samuel Friedman, individuals doing business as S. Friedman & Sons, and as Sunray Yarn House, hereinafter referred to as the respondents, have 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:

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PARAGRAPH 1. The respondents, Abraham Friedman and Samuel Friendman, are individuals doing business as S. Friedman & Sons and as Sunray Yarn House, having their office and principal place of business at 349 Grand Street, New York, N. Y.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of selling and distributing knitting yarns. The respondents sell their products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause said products, when sold, to be transported from their said place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their 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 their said business, and for the purpose of promoting the sale of their said products, the respondents have engaged in the practice of falsely representing the constituent fiber or material from which their said products are made, said false representations being made by means of labels attached to said products, by advertisements inserted in periodicals, and by means of catalogs, circulars, and other printed and written matter distributed among prospective purchasers.

PAR. 4. The word "Cashmere" has long been applied and is now applied to a particular type of wool fiber which is made from the hair of the Cashmere goat, and products made from such material have for a long time been well and favorably known to the purchasing public. The word "Cashmere," when used in connection with the designation and description of yarns, or other products having the general appearance of wool fibers, is understood and accepted by the purchasing public as denoting a product composed entirely of the hair of the Cashmere goat.

PAR. 5. Among the products sold and distributed by the respondents as aforesaid are two types or grades of yarn, one of which is designated by the respondents as "Sunray Cashmere Sport Yarn" and as "Sunray Cashmere Sport" and as "Cashmere Sport," and the other of which is designated by respondents as "Sunray Cashmere De Laine." By the use of said designations the respondents have represented and do now represent that both of said yarns are made entirely from the hair of the Cashmere goat.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact neither of said yarns is made entirely from the hair of the Cashmere goat. Said yarn designated by respondents as "Sunray Cashmere Sport Yarn" and as "Sunray Cashmere Sport" and as "Cashmere Sport" contains no hair of the Cashmere goat, and said yarn designated as "Sunray Cashmere De Laine" is a mixture of hair of the Cashmere goat and Australian wool, with the Australian wool predominating.

PAR. 7. The use by the respondents of the aforesaid false and misleading representations with respect to their said products 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 such representations are true, and into the purchase of substantial quantities of respondents' products.

PAR. 8. The aforesaid acts and practices of the respondents 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 August 27, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Abraham Friedman and Samuel Friedman, individuals doing business as S. Friedman & Sons, and as Sunray Yarn House, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Donovan Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Fineman, attorney for the respondents, before Lewis C. Russell, 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 and answer thereto, testimony and other evidence, brief in support of the complaint (respondents not having filed brief, and oral argument not having been requested); and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest

of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Abraham Friedman and Samuel Friedman, are individuals doing business as S. Friedman & Sons and as Sunray Yarn House, having their office and principal place of business at 349 Grand Street, New York, N. Y.

PAR. 2. The respondents are now and for more than 2 years last past have been engaged in the business of selling and distributing knitting yarns. The respondents sell their products to members of the purchasing public situated in New York and the various other States of the United States and in the District of Columbia. Approximately 25 percent of such sales are made to purchasers outside the State of New York. The respondents cause their products, when sold, to be transported by parcel post and by express to purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their 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 their business, and for the purpose of promoting the sale of their products, the respondents cause to be attached to their knitting yarns labels purporting to designate or describe the fibers or materials of which such yarns are made. Respondents also advertise their yarns in periodicals having a general circulation and by means of catalogs, circulars, and other advertising material distributed among prospective purchasers. Like the labels, this advertising material purports to describe, among other things, the fibers or materials of which the respondents' yarns are made.

Among the yarns sold and distributed by the respondents is a certain grade or type of yarn labeled and advertised by the respondents as "Sunray Cashmere Sport Yarn" and also as "Sunray Cashmere Sport" and as "Cashmere Sport." Another grade or type of yarn is labeled and advertised by the respondents as "Sunray Cashmere DeLaine." Both of these yarns have the general appearance of wool fibers.

PAR. 4. The evidence shows, and the Commission finds, that the word "Cashmere" has long been applied to a particular type of wool

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fiber which is made from the hair of the cashmere goat; and such term is so understood by the purchasing public. Knitting yarns and other products made from such fiber have for a long period of time been well known to the purchasing public and are held in high esteem by the public. Members of the public purchasing a knitting yarn labeled "Cashmere" expect to receive, and understand that they are receiving, a product composed entirely of fiber made from the hair of the cashmere goat.

PAR. 5. Through the use of the legends "Sunray Cashmere Sport Yarn," "Sunray Cashmere Sport," "Cashmere Sport," and "Sunray Cashmere DeLaine" to designate and describe certain of their yarns, the respondents represent that such yarns are made entirely from fiber produced from the hair of the cashmere goat. The Commission finds that these representations are misleading and deceptive. The yarn designated "Sunray Cashmere Sport Yarn," "Sunray Cashmere Sport," and "Cashmere Sport" in fact contains no fiber produced from the hair of the cashmere goat, but is composed entirely of other wool fibers. The yarn designated "Sunray Cashmere DeLaine" is composed of a mixture of fiber produced from the hair of the cashmere goat and fiber produced from Australian wool.

PAR. 6. The Commission further finds that the use by the respondents of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products are made, and to cause such portion of the public to purchase substantial quantities of respondents' products.

CONCLUSION

The acts and practices of the respondents 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 respondents, testimony and other evidence introduced by Donovan Divet, counsel for the Commission, in support of the allegations of the complaint, and by Louis Fineman, counsel for the respondents, in opposition thereto, before Lewis C. Russell, an examiner of the

Commission theretofore duly designated by it, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Abraham Friedman and Samuel Friedman, individually and trading as S. Friedman & Sons and as Sunray Yarn House, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of knitting yarns in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any other word of similar import or meaning, to describe, designate or refer to any product which is not composed entirely of fiber derived from the hair of the cashmere goat; provided, however, that in the case of products composed in part of fiber derived from the hair of the cashmere goat and in part of other fibers, such word may be used as descriptive of the cashmere fiber content, if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material of such products.

2. Representing in any manner whatsoever that fabrics or products offered for sale or sold by respondents contain Cashmere Wool in greater quantity than is actually the case.

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

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the Wool Products Labeling Act of 1939.

Syllabus

IN THE MATTER OF

LOUIS GREENBERG, TRADING AS RELIANCE JACKET CO.

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

Docket 4349. Complaint, Oct. 15, 1940—Decision, Mar. 19, 1941

Where an individual engaged in competitive interstate sale and distribution of sports jackets and other articles of merchandise; in soliciting sale of and in selling and distributing his products—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes when said merchandise was sold and distributed to ultimate consumers thereof, and distribution to operators and purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of his said merchandise, and circulars explaining his plan of selling same and of allotting it as premiums or prizes to operators of said cards and to purchasing and consuming public, and included, as typical, plan providing, as explained on said card, that person selecting by chance from list set forth on card, the feminine name corresponding to that concealed under master seal, received outing jacket or other article of merchandise being thus disposed of, and under which amount paid was dependent upon number disclosed in disk pertaining to particular name selected, others receiving nothing for their money; and thereby

Supplied to and placed in the hands of others means of conducting lotteries in sale of his merchandise by those to whom he furnished such cards, and who made use thereof in selling and distributing his said products in accordance with such sales plan, involving a game of chance to procure one of said articles of merchandise at price much less than normal retail price thereof, and under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid was determined wholly by lot, 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 use said or any method involving game of chance or any other method contrary to public policy, and refrain therefrom;

With the result that many persons were attracted by said sales plan or method and by element of chance involved therein, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by his said competitors who do not use same or equivalent method, and with tendency and capacity unfairly to divert trade in commerce to him from his said competitors;

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.