

Complaint

IN THE MATTER OF
ALTMAN NECKWEAR CORPORATION

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

Docket 4226. Complaint, Aug. 7, 1940—Decision, June 4, 1941

Where a corporation engaged in the manufacture of neckties and in the interstate sale and distribution thereof to members of the purchasing public—

- (a) Represented that a certain style of tie sold by it was made from materials woven by the Cherokee Indians, through labeling same "Cherokee Indian Homespun Wool," with likeness of an Indian depicted thereon, facts being said products were not made from materials woven or manufactured by the Cherokee or any other Indians;
 - (b) Represented that another style of tie was made wholly of silk, through labeling same "Duo-Silk-All-O Lined Throughout," when said product was not made entirely from silk, product of the cocoon of the silkworm, long held in great public esteem and in substantial demand, but consisted instead of a mixture of silk and rayon, the rayon predominating, so made as to simulate silk and practically indistinguishable by the purchasing public therefrom, with lining of rayon; and
 - (c) Failed to disclose in labeling and designating its said neckwear that lining thereof was composed of rayon and that tie materials consisted of mixture of rayon, predominating usually, with silk;
- With tendency and capacity to mislead purchasers and prospective purchasers into the erroneous belief that such representations were true and to induce them to purchase substantial numbers of its said neckties:

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 R. Divet for the Commission.

Mr. Herbert L. Slote and *Mr. Harold M. Goldblatt*, 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 Altman Neckwear Corporation, a corporation, hereinafter referred to as the 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, Altman Neckwear Corporation, is a corporation organized and existing under and by virtue of the laws of the

State of New York, and having its principal place of business at 333 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing neckties. The respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold, to be transported from its said place of business in New York to the 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. Respondent maintains, and at all times mentioned herein has maintained, a 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, for the purpose of promoting the sale of its products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source of the material of which certain others of them are made, and the persons by whom made, by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of certain of said products.

PAR. 4. Among the products sold and distributed by respondent as aforesaid are two styles of neckties. One of these styles respondent has labeled, "Cherokee Indian Homespun Wool" with the likeness of an Indian depicted thereon. The other style is labeled "Duo-Silk-All-O Lined Throughout." By the use of said labels, words and representations, respondent represents that the material of which the first group of said neckties are made was woven by the Cherokee Indians, and that the material of which the second group of said neckties are made is silk.

PAR. 5. The aforesaid representations are false and misleading. In truth and in fact the material from which said neckties known as "Cherokee Indian Homespun Wool" are made is not woven or manufactured by the Cherokee Indians or any other Indians, and the neckties labeled "Duo-Silk-All-O" are not made entirely from silk. The tie materials consist of a mixture of silk and rayon, the rayon predominating, the lining is rayon and the interlining cotton.

PAR. 6. 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, public esteem for their preeminent qualities, and because of such repu-

tation there is a substantial demand on the part of the purchasing public for such products. "Rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured has the appearance and feel of silk and is practically indistinguishable by the purchasing public from silk. By reason of these qualities rayon, when manufactured to simulate silk and not designated as rayon, is readily believed to be and is accepted by the purchasing public as being silk, the product of the cocoon of the silkworm. All of the rayon contained in respondent's said neckties labeled "Duo-Silk-All-O," is manufactured so as to simulate silk, and has the appearance and feel of silk. In selling and offering said "Duo-Silk-All-O" neckties for sale, respondent has not at any time mentioned in this complaint disclosed, and does not now disclose, by labels or in any other manner, the fact that the lining of said neckties is rayon, or that the tie materials consist of a mixture of silk and rayon, with the rayon predominating.

PAR. 7. The use by respondent of the aforesaid method of labeling and representing its neckties and of failing to disclose the rayon content thereof has had, and has, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and that the rayon fabric and fiber used in the make-up of said ties are silk, and to induce them to purchase substantial numbers of respondent's said neckties.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Altman Neckwear Corporation, a corporation, charging it 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Donovan R. Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Herbert L. Slote, attorney for the respondent, before Lewis C. Russell, a trial 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 said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of the complaint and in opposition thereto (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. Respondent, Altman Neckwear Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at 333 Fifth Avenue in the city of New York, State of New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing neckties. Respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia and causes said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, for the purpose of promoting the sale of its products, the respondent has engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source of the material of which certain other products are made, and the persons by whom made, by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose the rayon content of certain of said products.

PAR. 4. Among the products sold and distributed by respondent are two styles of neckties. One of these styles respondent has labeled "Cherokee Indian Homespun Wool" with the likeness of an Indian depicted thereon. The other style is labeled "Duo-Silk-All-O Lined Throughout." By the use of said labels, words, and representations, respondent represents that the neckties labeled "Cherokee Indian Homespun Wool" are made from materials woven by the Cherokee Indians and that the neckties designated "Duo-Silk-All-O Lined Throughout" are made wholly of silk.

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PAR. 5. The aforesaid representations are false and misleading. The neckties designated "Cherokee Indian Homespun Wool" are not made from materials woven or manufactured by the Cherokee Indians or any other Indians, and the neckties labeled "Duo-Silk-All-O" are not made entirely from silk but, instead, the tie materials consist of a mixture of silk and rayon, usually with rayon predominating, and with a lining of rayon and an interlining of wool or cotton.

PAR. 6. 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 have held, and still hold, public esteem for their preeminent qualities, and because of such reputation there is a substantial demand on the part of the purchasing public for such products. "Rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured has the appearance and feel of silk and is practically indistinguishable by the purchasing public from silk. All of the rayon contained in respondent's said neckties labeled "Duo-Silk-All-O" is manufactured so as to simulate silk and has the appearance and feel of silk. In labeling and designating its said neckwear, the respondent does not disclose in any manner the fact that the lining of said neckties is composed of rayon and that the tie materials consist of a mixture of silk and rayon, usually with rayon predominating.

PAR. 7. The use by the respondent of the aforesaid method of labeling and representing its neckties and of failing to disclose the rayon content thereof has had, and now has, the tendency and capacity to mislead purchasers and prospective purchasers into the erroneous and mistaken belief that such representations are true, and that the rayon fabric and fiber used in the make-up of said ties are silk, and to induce them to purchase substantial numbers of respondent's said neckties.

CONCLUSION

The aforesaid 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, answer of the respondent, testimony and other evidence taken before Lewis C. Russell, a trial examiner of the Commission theretofore duly designated by it, in sup-

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port of the allegations of said complaint and in opposition thereto, and report of the trial examiner upon the evidence, and briefs filed herein, 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 Altman Neckwear 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 neckties and other similar merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified term "silk" or any other term or terms of similar import or meaning indicative of silk, to describe or designate 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 a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content if they are used in immediate connection and conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber thereof.

2. Using the term "Duo-Silk-All-O" or any other term of similar import or meaning on labels, or otherwise, to describe, designate, or refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm.

3. Advertising, offering for sale, or selling neckties 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, such fibers or materials, including rayon, shall be named in letters of at least equal size and conspicuousness by words truthfully describing and designating each constituent fiber or material thereof.

4. Using the term "Cherokee Indian Homespun Wool" or any other term of similar import or meaning on labels, or otherwise, to describe, designate, or refer to any fabric or product which is not woven or manufactured by the Cherokee Indians.

5. Using any pictorial design of an Indian in connection with any description of, or reference to, fabrics or products which are not woven or manufactured by the American Indian.

6. Using the term "Indian" or any term which includes the word "Indian" or any colorable simulation thereof, or using any other term of similar import or meaning on labels, or otherwise, to describe,

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designate, or refer to any fabric or product which is not woven or manufactured by the American Indian.

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
E. B. MULLER & CO. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC.
2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 322½. Complaint, Feb. 11, 1938¹—Decision, June 11, 1941

Where corporations M. and F. with principal places of business in Port Huron, Mich., and Flushing, N. Y., engaged respectively, in the processing of chicory and, as between themselves, in noncompetitive complementary interstate sale and distribution thereof in bulk to coffee roasters and others, and in packaged form to retail outlets for resale to consumers, which, controlled and directed by husband and wife, were, prior to 1930, the only domestic producers of granulated chicory, with their only competition coming from the imported product, total imports of which were relatively small;

Following the installation in 1930 by S., theretofore principal importer of the product, of a plant in New Orleans for roasting and granulating imported dry chicory (operations of which S. concern in 1933 included the installation of a plant for drying chicory in Linwood, Mich., in the limited area in which the domestic product is grown, and in which said M. and F. procured and dried their supply; and shipment of the dried root therefrom to its New Orleans plant, where it roasted, granulated and prepared the root for distribution and sale); and as a part of a concerted and calculated campaign to harass, injure and, if possible, eliminate said S. from the competitive field, and thus to regain the substantially complete monopoly which they previously enjoyed in the distribution of chicory in the United States, and acting through one or the other, or both—

- (a) Represented that the color and uniformity of color of the chicory of M. were achieved by and attributable only to a superior method of roasting and a painstaking process of selecting and sorting, through affirmative statements in many ways, including published advertisements and letters to customers and prospective customers, when in fact said M. was artificially coloring its granulated chicory by adding iron oxide, which resulted in giving it an exceptionally desirable and uniform color, production of which solely by process of selection and roasting would be much more difficult and expensive, and of which addition it did not in any way advise its customers;
- (b) Defamed and disparaged the chicory products of said S., its sole competitor, on many occasions, with no sufficient knowledge of the facts to indicate good faith, through representing, by means of officials and sales representatives, that such products contained molasses, sugar beets or other foreign substances and were thus, as considered by the trade, adulterated; threatened customers of said competitor with seizure by governmental authority of chicory purchased from said competitor as being adulterated; and procured the institution of such a proceeding, advising chicory purchasers, on the basis of the analysis of one sample of product purportedly sold by said S., that said competitive product contained approximately 50 percent roasted sugar beet, and took no steps, following the

¹ Amended and supplemental.