

Complaint

IN THE MATTER OF

J. H. THORP & COMPANY, INC.

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

Docket 4310. Complaint, Sept. 12, 1940—Decision, June 28, 1941

Where a corporation engaged in the interstate sale and distribution of various grades and types of textile fabrics—

Falsely represented in advertisements, price lists, on labels, and otherwise, through designations "sunfast," "tubfast," "washable," and "fadeless," that said fabrics respectively would not change or lose color, or otherwise deviate from their original color when exposed to the light of the sun; would not change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; and would not similarly react when exposed to sunlight or laundering;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said statements were true, as a result of which a number of such public purchased its fabrics in substantial volume:

Held, That such acts and practices 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.

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 J. H. Thorp & Co., Inc., a corporation, hereinafter referred to as 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, J. H. Thorp & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 250 Park Avenue, in the city of New York, and State of New York, and a branch office and place of business at 10 East Thirty-fourth Street, in the city of New York, and State of New York.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in business of selling and distributing various grades and types of textile fabrics. 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 places of business in the State of 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 between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, in connection with the offering for sale, sale and distribution of its products, in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, in price lists, on labels, and otherwise, that certain of its fabrics are "sunfast," "tubfast," "fadeless," "washable."

PAR. 4. By the use in advertisements, in price lists, on labels, and otherwise, of the statement or representation that certain of its fabrics are "sunfast," respondent has represented that said fabrics will not change color when exposed to the light of the sun, by the use of statements or representations that certain of its fabrics are "tubfast" or "washable" respondent has represented that said fabrics will not change color, "bleed," lose color or otherwise deviate from their original colors and designs when washed or laundered; by the use of the statement that certain of its fabrics are "fadeless," respondent has represented that said fabrics will not change color, "bleed," lose color, or otherwise deviate from their original color and design when exposed to the light of the sun or washed or laundered.

PAR. 5. Respondent's statements and representations that its fabrics above referred to are "sunfast," "tubfast," "fadeless," or "washable" are false and misleading, for the reason that said fabrics stated to be "sunfast" will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; said fabrics stated to be "tubfast" or "washable" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; said fabrics stated to be "fadeless" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when exposed to the light of the sun or washed or laundered.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements are true. On account of this erroneous and mistaken belief, so induced by respondent, a number of the purchasing and consuming public have purchased a substantial volume of respondent's fabrics.

PAR. 7. 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 September 12, 1940, issued, and subsequently served its complaint in this proceeding upon respondent J. H. Thorp & Co., 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 October 26, 1940, the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, J. H. Thorp & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 250 Park Avenue, in the city of New York, and State of New York, and a branch office and place of business at 10 East Thirty-fourth Street, in the city of New York, and State of New York.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics. 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 places of business in the State of 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 between and among the various States of the United States and in the District of Columbia.

Conclusion

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PAR. 3. In the course and conduct of its business, in connection with the offering for sale, sale and distribution of its products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has stated in advertisements, in price lists, on labels, and otherwise, that certain of its fabrics are "sunfast," "tubfast," "fadeless," "washable."

PAR. 4. By the use in advertisements, in price lists, on labels, and otherwise of the statement or representation that certain of its fabrics are "sunfast," respondent has represented that said fabrics will not change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; by the use of statements or representations that certain of its fabrics are "tubfast" or "washable" respondent has represented that said fabrics will not change color, "bleed," lose color or otherwise deviate from their original colors and designs when washed or laundered; by the use of the statement that certain of its fabrics are "fadeless," respondent has represented that said fabrics will not change color, "bleed," lose color, or otherwise deviate from their original color and design when exposed to the light of the sun or washed or laundered.

PAR. 5. Respondent's statements and representations that its fabrics above referred to are "sunfast," "tubfast," "fadeless," or "washable" are false and misleading, for the reason that said fabrics stated to be "sunfast" will change color, lose color, or otherwise deviate from their original color when exposed to the light of the sun; said fabrics stated to be "tubfast" or "washable" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when washed or laundered; said fabrics stated to be "fadeless" will change color, "bleed," lose color, or otherwise deviate from their original colors and designs when exposed to the light of the sun or washed or laundered.

PAR. 6. The use by the respondent of the aforesaid false and misleading statements has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements are true. On account of this erroneous and mistaken belief, so induced by respondent, a number of the purchasing and consuming public have purchased a substantial volume of respondent's fabrics.

CONCLUSION

The aforesaid acts and practices of 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 and the answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, 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, J. H. Thorp & Co., 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 or distribution of its textile fabric products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by the use of the word "sunfast" or any other word of similar import or meaning, that the colors of respondent's textile fabric products will not change color, or lose color, or otherwise deviate from their original color when exposed to the light of the sun.

2. Representing by the use of the terms "tubfast", or "washable", or any other term or terms of similar import or meaning, that respondent's textile fabric products will not "bleed" or lose color, or otherwise deviate from their original colors or designs when washed or laundered.

3. Representing by the use of the term "fadeless" or any other term or terms of similar import or meaning, that respondent's textile fabric products will not "bleed" or lose color, or otherwise deviate from their original colors or designs when washed or laundered, or exposed to the light of the sun.

4. Representing in any manner or by any means that the colors of respondent's textile fabric products will not change color, or will not fade, or will not deviate from their original color when exposed to the light of the sun, or when washed or laundered.

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
H. W. LAY & COMPANY, INC.

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

Docket 4439. Complaint, Dec. 31, 1940—Decision, June 28, 1941

Where a corporation engaged in the competitive interstate sale and distribution of food products, including assortments of nuts which were so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold to the consuming public, and included, as typical, a display card with twenty-seven 5-cent packages of nuts, three of which, however, had concealed within them slip of paper bearing the word "free," and were without cost to purchasers procuring same;

Sold such assortments to jobbers and, directly or indirectly, to retailers, by whom they were exposed and sold in accordance with said plan, involving game of chance to procure, without cost, package of nuts, and thus supplied to and placed in the hands of others means of conducting lotteries in the sale of its products, contrary to established public policy of the United States Government, and in competition with many who, unwilling to use such or other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by its said sales plans and the element of chance involved therein and were thereby induced to buy and sell its products in preference to those of its said competitors, whereby trade was unfairly diverted to it from them and substantial injury was done to competition:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Hirsch, Smith, Kilpatrick, Clay & Cody, of Atlanta, Ga., 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 H. W. Lay & Co., Inc., a corporation, hereinafter referred to as 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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent H. W. Lay & Co., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 444 Marietta Street, Atlanta, Ga. Respondent is now and has been for more than 1 year last past engaged in the sale and