

Complaint

IN THE MATTER OF

ABRAHAM FRIEDMAN AND SAMUEL FRIEDMAN, TRADING
AS S. FRIEDMAN & SONS, AND AS SUNRAY YARN HOUSE

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

Docket 4891. Complaint, Jan. 22, 1943—Decision, Jan. 8, 1944

Where two individuals engaged in interstate sale and distribution of knitting yarns; in price lists, sample cards and other advertising material and on labels attached to their products—

- (a) Made use of such terms as "Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn"; "Sportswear Angora, 85% Wool, 15% Angora"; "Rainbow Tweed, 60% Spunsilk, 40% Rayon"; "Crash Tweed, 90% Cotton, 10% Rayon"; "Zephyr Nub, All Virgin Wool"; and "Lustre Worsted, 50% Wool, 50% Rayon":

The facts being that said "Burma Yarn," made to simulate wool, was composed, in addition to 50% cotton, of 50% rayon, presence of which was not disclosed, with tendency and capacity to induce purchasing public to believe that it contained wool or other fiber and no rayon; the "Sportswear Angora" contained no Angora goat hair, but rabbit, and the "Tweeds" no wool, as understood by purchasing public from use of word; and the "All Virgin Wool" and "Lustre Worsted" were not, as thus represented, all wool, but contained cotton and rayon, respectively;

- (b) Falsely represented as silk, yarns composed partly of wool and partly of rayon through use of the designations "Mystic Crepe" and "Crinkle Crepe"; and

- (c) Falsely represented certain of their products as composed entirely of wool from the Shetland Islands or contiguous mainland of Scotland, or from Saxony or Burma, as case might be, through use of designations "Lustre Shetland," "Shetland Floss," "Saxony Zephyr," and "Burma Yarn";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers of their said products, and their place of origin, whereby it was induced to purchase substantial quantities thereof:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Fineman & Stillman, 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, trading as S. Friedman & Sons and as Sunray Yarn House, have 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. Respondents, Abraham Friedman and Samuel Friedman, are individuals, trading as S. Friedman & Sons and as Sunray Yarn

House, with their principal place of business located at 349 Grand Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the business of selling and distributing various grades and types of knitting yarns. 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 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 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 their said business, respondents have engaged in the practice of falsely representing the constituent fiber or material of which various products sold and distributed by them are made, and of falsely representing the place of origin of certain of their products, by means of false representations on labels attached to their products and on sample cards and other advertising matter circulated among prospective purchasers. In furtherance of the foregoing practices and for the purpose of inducing the purchase of said products, respondents have caused false and misleading statements and representations, purporting to be descriptive of such products and of their respective constituent fibers or materials, and places of origin, to be inserted in price lists, sample cards and other advertising matter distributed by means of the United States mails and otherwise to prospective purchasers of such products situated in various States of the United States.

PAR. 4. The words "tweed" and "worsted" are words long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of certain types of fabrics composed entirely of wool.

The word "crepe" has been and is associated in the minds of the purchasing public with fabrics made from silk, the product of the cocoon of the silk worm. When the term "crepe" is used to designate knitting yarn, it is understood by the purchasing public as denoting that such product is made from silk.

The word "Angora" has long been understood by the purchasing public as denoting products made from the hair of the Angora goat, and when such term is used to designate or describe a product having the appearance of wool fiber, such term is understood by the purchasing public as denoting a product made from the hair of the Angora goat.

The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured to simulate either silk or wool and not designated as rayon, is readily believed and accepted by the purchasing public as being either silk or wool, as the case may be.

PAR. 5. Among and typical of the representations used to falsely represent the constituent fiber or material of which various products sold and distributed by respondent are made are the following:

Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn"
Sportswear Angora, 85% Wool, 15% Angora
Rainbow Tweed, 60% Spunsilk, 40% Rayon
Mystic Crepe, 70% Wool, 30% Rayon

Crinkle Crepe, 60% Wool, 40% Rayon
Crash Tweed, 90% Cotton, 10% Rayon
Zephyr Nub, All Virgin Wool
Lustre Worsted, 50% Wool, 50% Rayon

PAR. 6. Respondent's product "Burma Yarn" represented by the respondents as containing 50% synthetic fiber in addition to 50% cotton is in fact composed of 50% of rayon in addition to 50% cotton. It is so manufactured as to simulate wool, and the nondisclosure of its rayon content has a tendency and capacity to induce the purchasing public to believe that it does not contain rayon but does contain some other fiber, such as wool.

Respondent's product "Sportswear Angora" contains 15% rabbit hair in addition to 85% wool. The purchasing public is induced by the respondent's designation "Angora" in the description of said product to believe that said product contains hair of the Angora goat, when in fact it is composed of rabbit hair and does not contain any hair of the Angora goat.

The designation of certain of respondent's products as "Rainbow Tweed" and "Crash Tweed" are representations to the purchasing public that said products are composed entirely of wool, when in fact they contain no wool.

By designating certain of their products as "Mystic Crepe" and "Crinkle Crepe" respondents represent to the public that said products are made from silk, when such is not the fact. Said products are composed partly of wool and partly of rayon, and do not contain any silk.

By representing one of their products as "Zephyr Nub, All Virgin Wool" respondents represent to the public that said product is composed wholly of wool, whereas in fact it contains cotton in addition to wool.

By the designation of one of their products as "Lustre Worsted," respondents represent to the public that said product is composed entirely of wool, when in fact it is composed partly of rayon.

PAR. 7. Among and typical of the representations made by the respondents to falsely represent the places of origin of certain of their products are the following: "Lustre Shetland," "Shetland Floss," "Saxony Zephyr" and "Burma Yarn." Through the use of such legends the respondents represent that the yarns designated "Lustre Shetland" and "Shetland Floss" are made from wool of sheep from the Shetland Islands or the contiguous mainland of Scotland, that the yarn designated "Saxony Zephyr" is made from wool of sheep from the Province of Saxony, and that the yarn designated "Burma Yarn" is made of material imported from Burma or of wool grown in Burma.

The words "Shetland," "Saxony" and "Burma," when used in connection with the designation and description of yarns sold by the respondents are considered by members of the purchasing public as being descriptive of wool products composed entirely of wool from sheep found only in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, and Burma, respectively.

In truth and in fact, none of said yarns are made from wool grown in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, or Burma.

PAR. 8. The acts and practices of the respondents, as herein set forth, have the tendency and capacity to, and do, mislead and deceive a sub-

stantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products are made and the places of origin of such products. As a result, the purchasing public has been induced to, and has, purchased substantial quantities of respondents' products.

PAR. 9. 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 January 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Abraham Friedman and Samuel Friedman, trading 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 that act. After the filing of respondents' answer, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for the respondents, and certain testimony and other evidence were also introduced at such hearing, the stipulation, testimony, and other evidence being duly recorded and subsequently filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, the stipulation as to the facts, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (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, trading as S. Friedman & Sons and as Sunray Yarn House, with their principal place of business located at 349 Grand Street, New York, N. Y. Respondents are now, and for a number of years last past have been, engaged in the sale and distribution of various grades and types of knitting yarns to members of the purchasing public.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and 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 inducing the purchase of their products, respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their products were made and the place of origin of

certain of their products. These representations were made by means of labels attached by respondents to their products, and also by means of price lists, sample cards, and other advertising material distributed by respondents through the United States mails and otherwise among prospective purchasers.

PAR. 4. The words "tweed" and "worsted" are words which have been long and favorably known to a substantial portion of the purchasing public as descriptive of certain types of fabrics composed entirely of wool.

The word "crepe" has been and is associated in the minds of the purchasing public with fabrics made from silk, the product of the cocoon of the silkworm. When the term "crepe" is used to designate knitting yarn, it is understood by the purchasing public as denoting that such product is made from silk.

The word "Angora" has long been understood by the purchasing public as denoting products made from the hair of the Angora goat, and when such term is used to designate a product having the appearance of wool fiber, it is understood by the purchasing public as denoting a product made from the hair of the Angora goat.

Rayon is a chemically manufactured fiber or fabric which may be manufactured to simulate either silk or wool and, when manufactured to simulate silk or wool and not designated as rayon, it is readily believed and accepted by the purchasing public as being silk or wool, as the case may be.

PAR. 5. Among and typical of the representations used by respondents falsely to represent the constituent fibers or materials of which certain of their products were made were the following:

Burma Yarn, 50% Synthetic Fiber, 50% Cotton Yarn

Sportswear Angora, 85% wool, 15% Angora

Rainbow Tweed, 60% Spunsilk, 40% Rayon

Mystic Crepe, 70% Wool, 30% Rayon

Crinkle Crepe, 60% Wool, 40% Rayon

Crash Tweed, 90% Cotton, 10% Rayon

Zephyr Nub, All Virgin Wool

Lustre Worsted, 50% Wool, 50% Rayon.

The product designated "Burma Yarn," represented by respondents as containing 50% synthetic fiber in addition to 50% cotton, was in fact composed of 50% rayon in addition to 50% cotton. It was so manufactured as to simulate wool, and the nondisclosure of the rayon content had the tendency and capacity to induce the purchasing public to believe that it did not contain rayon, but did contain some other fiber, such as wool.

The product "Sportswear Angora" contained 15% rabbit hair in addition to 85% wool. The purchasing public was induced by the designation "Angora" in the description of the product to believe the product contained hair of the Angora goat, when in fact the fiber in question was rabbit hair. The product did not contain any hair of the Angora goat.

The designations "Rainbow Tweed" and "Crash Tweed" constituted representations to the purchasing public that the products so designated were composed entirely of wool, when in fact they contained no wool.

The designations "Mystic Crepe" and "Crinkle Crepe" constituted representations to the public that the products so designated were made from silk, when such was not the fact. These products were composed partly of wool and partly of rayon and did not contain any silk.

The designation "Zephyr Nub, All Virgin Wool" constituted a representation to the public that the product so designated was composed entirely of wool, when in fact it contained cotton in addition to wool.

The designation "Lustre Worsted" constituted a representation to the public that the product so designated was composed entirely of wool, when in fact it was composed partly of rayon.

PAR. 6. Among and typical of the representations used by respondents falsely to represent the place of origin of certain of their products were the following: "Lustre Shetland," "Shetland Floss," "Saxony Zephyr," and "Burma Yarn." Through the use of these designations, the respondents represented that the yarns designated "Lustre Shetland" and "Shetland Floss" were made from the wool of sheep found only in the Shetland Islands or the contiguous mainland of Scotland; that the yarn designated "Saxony Zephyr" was made from the wool of sheep found only in the Province of Saxony; that the yarn designated "Burma Yarn" was made from the wool of sheep found only in Burma.

The words "Shetland," "Saxony," and "Burma," when used in connection with the designation and description of yarns, are considered by members of the purchasing public as being descriptive of wool products composed entirely of wool from sheep found only in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, and Burma, respectively. In truth and in fact, none of the yarns so designated by respondents was made from wool grown in the Shetland Islands or the contiguous mainland of Scotland, the Province of Saxony, or Burma.

PAR. 7. The acts and practices of the respondents as herein set forth had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public with respect to the constituent fibers or materials of which respondents' products were made and the place of origin of such products. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' products.

The use of the representations herein set forth was discontinued by respondents some two years ago.

CONCLUSION

The acts and practices of the respondents as herein found 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.

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, a stipulation as to the facts, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

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

1. Using the words "wool," "tweed," or "worsted," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool: Provided, however, that in the case of a product composed in part of wool and in part of other fibers or materials, such words may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: Provided, however, that in the case of a product composed in part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

3. Using the word "Angora" or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of hair of the Angora goat: Provided, however, that in the case of a product composed in part of hair of the Angora goat and in part of other fibers or materials, such word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

4. Using the unqualified word "crepe," or any other descriptive term indicative of silk, to designate, describe, or refer to any product which is not composed entirely of silk, the product of the cocoon of the silkworm: Provided, however, that such word or descriptive term may be used truthfully to designate or describe the type of weave, construction, or finish if such word is qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words accurately describing the fibers or materials from which such product is made.

5. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

6. Using the word "Saxony," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to desig-

nate, describe, or refer to any product which is not composed entirely of wool from sheep found only in the Province of Saxony.

7. Using the word "Burma," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of wool from sheep found only in Burma.

8. Misrepresenting in any manner or by any means, directly or by implication, the fibers or materials of which respondents' products are made, or the place of origin of such products.

It is further ordered, That the respondents shall, within 60 days after the 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 provision of this order shall be construed as relieving the respondents in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

Syllabus

IN THE MATTER OF

ROCK CRUSHER MANUFACTURERS ASSOCIATION ET AL.

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

Docket 5026. Complaint, Aug. 14, 1943—Decision, Jan. 8, 1944

Where a number of manufacturers and some 300 distributors of rock crushers and other heavy road-building and construction machinery, together with their respective trade associations, and their officers, governors and directors, acting in cooperation with each other—

Entered into, maintained and carried out a common course of action, understanding, agreement, combination and conspiracy among themselves to hinder and suppress competition in interstate sale and distribution of rock crushing machinery to the United States government and agencies thereof, to State governments and agencies, and to governmental sub-divisions of the states, including counties and cities, and other buyers and users; and to create in themselves a monopolistic control therein; and in furtherance of such understandings, etc.—

- (a) Agreed to, and did, issue and adhere to price lists increasing price quotations on such machinery and establish and maintain a 20 percent discount to their dealers from the prices quoted therein; and agreed on terms and discounts to be extended to customers, including the federal government;
- (b) Agreed upon, and used, during 1935 and subsequently, a scheme of allocating among themselves in rotation the contracts and orders awarded by the government in its purchase of such machinery, according to the designated member in each instance the privilege of submitting a lower bid to the government than the bids of others;
- (c) Agreed not to, and did not, accept used rock crushing machinery in trade from customers for new machinery, or rent such machinery to them; and agreed to, and did, limit to 90 days guarantees on rock crushers which theretofore had been guaranteed by some members for as long as two years; and
- (d) Agreed to, and did, act through one member and its agents, including a certain individual of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with them another seller who had frequently submitted lower prices than they on Government bids; and

Where said member manufacturers, and the member officers, etc., of said distributors' association—

- (e) Inaugurated and promoted a program which was designed to establish in the members of said distributors' association a monopolistic control over price quotations on rock crushing machinery made to government or private buyers, which — at the instance of said member distributors — included a collective agreement on the part of members of said manufacturers' association to file with said distributors a statement of sales policy in the form of a written pledge providing that such manufacturer members "will not bid direct on local government business in competition with distributors except at list price, and that they will not allow any price concessions to distributors for their use on public bids"; and providing that said manufacturers' list prices include a profit differential for distributors maintaining said list prices substantially 20 percent above the prices actually quoted and charged them by said member manufacturers; and thereafter and in accord-