

Complaint

38 F. T. C.

IN THE MATTER OF

MAX HABERNICKEL, JR., AND JOHN A. ANDERSON,
TRADING AS HABAND COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4790. Complaint, July 30, 1942—Decision, May 31, 1944*

Where two partners engaged in interstate sale and distribution of men's neckties by mail, chiefly, and in promoting sale thereof through circular letters in which were enclosed depictions of certain of their said products, and in some instances samples of material,—

- (a) Represented certain types as "all silk" in their advertising material and on the labels thereof, notwithstanding the fact product involved was not composed entirely of pure silk—preferred by the public over fabric containing weighting material—but contained about fifty per cent of metallic weighting;
- (b) Represented through their advertising material and labels that certain of their ties were "hand-made," facts being that while one of the operations employed in their manufacture was performed by hand, all the others were performed by machine, and products concerned, therefore, could not properly be designated as "hand-made"; and
- (c) Failed to disclose, or disclosed inadequately through a small part of a closely printed letter or through a partially concealed and inconspicuous statement on the innerlining of some of its ties, that the major portion of its said products—which had the appearance and feel of the preferred silk, and samples and pictorial representation of which created said impression—were composed entirely or in part of rayon;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and to cause it to purchase substantial quantities of such products as a result of the erroneous belief so engendered:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Alexander M. MacLeod, of Paterson, N. J., and *Rabbino & Rabbino*, 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 Max Habernickel, Jr., and John A. Anderson, co-partners, trading as Haband Company, hereinafter referred to as 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:

PARAGRAPH 1. Max Habernickel, Jr., and John A. Anderson, are co-partners, trading under the name "Haband Company," with their principal place of business located at 680 Madison Avenue in the city of

Paterson, in the State of New Jersey. They are now, and for some time past have been, engaged in the sale and distribution of men's neckties in commerce between and among various States of the United States, causing said products, when sold, to be shipped from their place of business at Paterson, N. J., to various purchasers thereof located in States other than New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said neckties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their said business, and for the purpose of promoting the sale of their neckties, the respondents have engaged in the practice of falsely representing the constituent fiber or material of certain of such products and of falsely representing the source and kind of material of which certain others are made, and the persons by whom made, and the manner in which they are made; by means of false representations appearing on labels attached to said products, and otherwise, and by failing to disclose in their advertising literature the rayon content of certain others of said products.

PAR. 3. Illustrative of the respondents' practices described in paragraph 2 hereof is their labeling of a necktie designated as "The Aldrich No. 1202." This tie is labeled and represented as "all silk." For many years, the word "silk" has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. For many years silk products have been held in high public esteem and confidence by reason of their preeminent qualities. Products composed entirely of pure silk and made without weighting are regarded by the public generally as superior to, and much to be preferred over, silk products which contain weighting. The label "all silk" attached to respondents' neckties designated "The Aldrich No. 1202," constitutes a representation that such neckties are made wholly and entirely from pure silk without any weighting material whatever.

PAR. 4. Weighted silk has the same general appearance as pure silk or unweighted silk and due to such similarity in appearance consumers generally are not able to distinguish between such products at the time of purchase. Respondents' failure to disclose the presence of weighting material in certain of their neckwear and the amount of such weighting constitutes a representation to their customers and to the purchasing public that such neckties are in fact made entirely from pure silk. In truth and in fact the fabric from which certain of respondents' neckties, including the one designated "The Aldrich No. 1202," are made is composed to a very substantial extent of weighting material.

PAR. 5. Among the products sold and distributed by respondents is a necktie designated "The Cherokee, No. 1275," bearing an Indian head on the label thereof and the legend "Hand Made Tie." By the use of such label, words and representations, respondents represent that the material of which said necktie is composed was woven by the Cherokee Indians and that it is made by hand. In truth and in fact, the material from which said necktie known as "The Cherokee" is composed is not woven or manufactured by the Cherokee Indians or any other Indians, and is not properly represented, designated or referred to as made by hand, since part of the work on such tie was and is performed with or by machines.

PAR. 6. The major portion of neckties sold and distributed by the respondents are composed entirely or in large part of rayon, but such fact is not disclosed in the advertising matter, sales promotional descriptions and representations or in the lithographed reproductions of such ties which are circulated by respondents to their customers. The lithographed reproductions of respondents' rayon ties are circulated by them to their customers and prospective customers along with reproductions of other ties which are designated "all silk" and "genuine wool." The word "rayon" is the name of the chemical fiber or fabric which can be manufactured so as to simulate silk in that 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 silkworm.

The respondents' failure to disclose the rayon content of the fabrics from which said neckties were made has the capacity and tendency to conceal the fact that such neckties are made in whole or in part from rayon, and also has the tendency and capacity to mislead and deceive members of the public into the belief that such ties are composed of fabrics other than those made from rayon, including silk or wool.

PAR. 7. The use by respondents of the aforesaid method of labeling and representing certain of their neckties as "All-Silk," "Cherokee," and "Hand Made," and respondents' failure to disclose in their advertising and promotional literature the rayon content of certain other of their neckties, 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 makeup of certain of said neckties is some material other than rayon, and to induce them to purchase substantial quantities of respondents' said neckties.

PAR. 8. The aforesaid acts and practices of the respondents, 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 July 30, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Max Habernickel, Jr., and John A. Anderson, copartners, trading as Haband Company, 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, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs in support of and in opposition

to the complaint, and oral argument; 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, Max Habernickel, Jr., and John A. Anderson, are copartners, trading under the name Haband Company, with their principal place of business located at 680 Madison Avenue, Paterson, N. J. They are now and for a number of years last past have been engaged in the sale and distribution of men's neckties.

PAR. 2. In the course and conduct of their business respondents cause their products, when sold, to be shipped from their place of business in the State of New Jersey 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. Practically all of respondents' sales are made direct to the purchasing public through the mail. In promoting the sale of their neckties respondents send circular letters to many members of the public, and in such letters are enclosed pictorial representations of certain of respondents' ties and, in some instances, samples of the materials of which certain of such ties are made. Some of the letters themselves have imprinted thereon a pictorial representation of one type of tie sold by respondents, together with statements purporting to describe the method by which the tie is manufactured and the material of which it is made.

PAR. 4. Among the types of neckties advertised and sold by respondents is one which is represented by respondents as being "all silk," such representation being made both in respondents' letter and other printed advertising material and on labels attached to the ties. Actually, the fabric from which this tie is made is not composed entirely of silk but contains approximately fifty percent of metallic weighting material. The word "silk" has to the consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm; and, when not qualified, the word is understood by the public as denoting pure or unweighted silk. There is a preference on the part of the public for products made of pure silk over those which are not composed entirely of silk but contain weighting material.

PAR. 5. Weighted silk has the same general appearance as unweighted or pure silk, and because of such similarity in appearance the public generally is unable to distinguish between the two types of products. In the absence of information to the contrary, the public understands that products having the appearance of silk are in fact made from pure silk rather than weighted silk. Respondents do not in any way disclose the presence of weighting material in the necktie in question, and the failure to make such disclosure has the effect of causing the public to believe that such necktie is made entirely from pure silk.

PAR. 6. Respondents also represent through their advertising material and by means of labels attached to certain of their neckties that such ties are "hand-made." While one of the major operations employed in

the manufacture of such ties is performed by hand, all of the other operations are performed by machine rather than by hand, and such ties therefore cannot properly be designated as hand-made.

PAR. 7. Although the major portion of respondents' neckties are composed entirely or in large part of rayon, such fact is not disclosed by respondents to prospective purchasers, or if any disclosure is made, such disclosure is inadequate. Rayon is a chemically manufactured fiber or fabric which can be manufactured so as to simulate silk, and when so manufactured it has the appearance and feel of silk and is practically indistinguishable from silk by the purchasing public. By reason of these qualities, rayon when manufactured to simulate silk and not designated as rayon is believed by the purchasing public to be silk and is accepted as such. The samples and pictorial representations which respondents enclose in their circular letters create the impression that the neckties are made of silk, and the ties themselves have the appearance and feel of silk. There is a preference on the part of a substantial portion of the public for products made of silk over those made in whole or in part of rayon.

Formerly, no disclosure at all was made by respondents of the fact that their ties contained rayon. In more recent years, however, some of respondents' circular letters have contained statements indicating that the ties are or may be composed of rayon. For example, one form of letter used contains the statement, "For years we have been marketing this one good quality rayon tie and this intensive concentration has resulted in a tie no one else seems to match at our price." This sentence constitutes only a small part of a closely-printed letter of about a page in length and is likely to escape the attention of the average purchaser. None of the pictorial representations enclosed in the letter refers to the fact that the ties are made of rayon.

During recent years respondents have caused to be stamped or imprinted on the lining of some of their rayon ties the legend, "Constructed of high grade rayon with an inner lining insuring long wear and good tying qualities." This statement, however, is partially concealed by the folds of the tie itself rendering it inconspicuous and likely to be overlooked by one examining the tie. In fact, certain members of the public who testified in this proceeding overlooked the legend in examining the tie, and also overlooked the statement in the circular letter.

The Commission therefore finds that such disclosure as respondents have made of the rayon content of their ties is inadequate and is insufficient to apprise the purchasing public of the fact that such ties are not composed of silk but are composed in whole or in part of rayon.

PAR. 8. The acts and practices of the respondents, as herein set forth, including the failure of respondents to disclose the presence and amount of weighting material in certain of their products and the failure to disclose that certain of their products are composed in whole or in part of rayon, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the materials of which respondents' products are made and the method of manufacture of such products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

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, 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, briefs in support of and in opposition to the complaint, and oral argument; 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, Max Habernickel, Jr., and John A. Anderson, individually, and as copartners, trading as Haband Company, or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondents' neckties in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "All Silk," or the unqualified word "Silk," or any other word or words of similar import, to designate or describe any fabric which is not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Advertising, offering for sale or selling products made in whole or in part from silk containing metallic weighting without clearly and conspicuously disclosing in all invoices and advertising material, and on labels or tags attached to such products, the presence of such weighting and the percentage thereof by weight in relation to the total weight of the silk in its finished state—as, for example, "Silk, weighted 50%"; provided, however, that such disclosure may be made by stating truthfully that such weighting is not in excess of a specified percentage—as, for example, "Silk, weighted not over 60%."

3. Advertising, offering for sale or selling products composed in whole or in part of rayon without clearly and conspicuously disclosing such rayon content in all invoices and advertising material, and on labels or tags attached to such products; and when such 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 disclosed in the manner and by the means set forth above.

4. Using the words "Hand Made," or any other word or words of similar import, to designate or describe products not made entirely by hand.

5. Misrepresenting in any manner or by any means the materials of which respondents' products are made or the method by which such products are made.

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.

IN THE MATTER OF
CLERMONT CRAVAT 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 4791. Complaint, July 30, 1942—Decision, May 31, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of men's neckties,

- (a) Represented certain type as "all silk" through labels attached thereto, notwithstanding fact product involved was not composed entirely of pure silk, preferred by the public over those containing weighting material, but contained about 50% of metallic weighting;
- (b) Represented through labels attached to certain of its neckties that they were "hand-made," facts being that while one of the major operations employed in the manufacture was performed by hand, all the others were performed by machine, and ties concerned, therefore, could not properly be designated as hand-made;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and to cause it to purchase substantial quantities of such products as a result of the mistaken belief so engendered:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Harry B. Denner and Rabbino & Rabbino, 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 Clermont Cravat Company, Inc., 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, Clermont Cravat Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business at 39 West 29th Street in the city of New York, State of New York. It is now, and for some time past has been, engaged in the manufacture of men's neckties and in the sale and distribution thereof in commerce between and among the various States of the United States. It causes and has caused said products, when sold, to be shipped from its place of business in the State of New York, to various purchasers thereof located in States other than the State of New York. 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.