

IN THE MATTER OF
LOUIS GOLDBERG, TRADING IN THE NAMES OF ACME
AND ACME MAIL ORDER HOUSE

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

Docket 5023. Complaint, Aug. 10, 1943—Decision, June 27, 1945

Where an individual engaged in the interstate sale and distribution to customers for their own use and for resale, of used, worn, or second-hand clothing—

(a) Represented falsely through statements in advertisements in newspapers, and catalogs that his said products were only slightly used; that much of his said merchandise was brand new and was obtained from bankrupt and close-out sales; and that all his merchandise which was not represented as new was cleaned, pressed, repaired, and ready to be worn;

(b) Represented, as aforesaid, that dresses which he offered consisted of all silk material and that men's coats were made of all wool fabrics;

The facts being that many of such "silk" dresses were in fact composed in whole or in part of rayon or materials other than silk, and such "All Wool" men's overcoats consisted in part of cotton; and

(c) Failed to disclose either in his said advertising or by the use of tags or labels or other markings on said merchandise, that certain of said products were second-hand or previously used or worn;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true and of thereby inducing the purchase of substantial quantities of his said products:

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. Arthur F. Thomas*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Warner & Birdsall, 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 Louis Goldberg, an individual, trading in the names of Acme and Acme Mail Order House, hereinafter referred to as respondent, has 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. Respondent, Louis Goldberg, is an individual, trading in the names of Acme and Acme Mail Order House, with his principal place of business located at 120 East Broadway in the city and State of New York.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of used,

worn or second-hand clothing, which is bought by his customers both for their own use and for resale.

Respondent causes the said products, when sold, to be transported from his aforesaid 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.

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 his aforesaid business and for the purpose of inducing the purchase of his said products respondent has made false and misleading statements and representations with respect to the physical condition and fiber content thereof by means of insertions in newspapers having general circulations throughout the United States and in catalogs disseminated to purchasers and prospective purchasers through the United States mails. Among and typical of the false and misleading statements and representations so used and circulated are the following:

Ten slightly used, stylish silk dresses, cleaned, ready to wear, \$3 (send \$1, balance C.O.D.); free 32-page catalog; agents wanted. Acme, 164 Henry St., Dept. E, New York City.

Spectacular bargains in women's and misses' silk dresses . . . cleaned and pressed and ready for wear.

SLIGHTLY USED AND BRAND NEW MERCHANDISE FROM BANKRUPT AND CLOSEOUT SALES.

TEN Silk DRESSES \$3.45

CLEANED—PRESSED—READY TO WEAR . . .

Buy them for yourself. Buy them to sell.

ACME PRESENTS THIS 4 **** special to our preferred customers

LADIES' AND MISSES' SLIGHTLY USED SILK DRESSES.

A stunning assortment of silks, crepes, satins and georgettes in the latest styles.

Men's Super Quality ALL WOOL OVERCOATS.

All merchandise which is not listed new is cleaned, pressed, repaired and ready to wear.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, the respondent has represented that his said products are only slightly used; that the dresses which he offers for sale consist of all silk material; that much of his said merchandise is brand new and is obtained from bankrupt and closeout sales; that the men's overcoats which he offers for sale are made of all wool fabrics; that all merchandise sold by respondent which is not represented as new is cleaned, pressed, repaired and ready to be worn.

PAR. 5. In truth and in fact the said statements and representations used and disseminated by respondent as aforesaid are false, misleading and deceptive. Many of respondents said products described as "slightly used" are in an advanced state of wear and use. Many of the dresses which respondent described as "silk" are composed of rayon in whole or in part and of other materials than silk. Very little of respondent's merchandise is new, and the bulk of his products do not come from bankrupt or closeout sales. The men's overcoats which respondent advertises as all wool are not all wool but consist in part of cotton materials, and all of respondent's merchandise not represented as new is not cleaned, pressed, repaired and ready to be worn.

PAR. 6. In addition to the misrepresentations, hereinabove set out the respondent has engaged in the use of false, deceptive and misleading methods in his said business by failing to disclose either in said advertising or by the use of tags and labels or other markings on said merchandise that certain of said products were second-hand or previously used or worn, and by failure to disclose the true constituent fiber or material from which certain of his said products were made, thereby placing in the hands of purchasers thereof for resale the means and instrumentalities whereby the consumer-purchasers of said goods can be misled and deceived.

PAR. 7. The acts and practices of respondent, as herein set forth, have had the tendency and capacity to, and do and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said products.

PAR. 8. The aforesaid acts and practices, 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 10, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Louis Goldberg, an individual, charging him 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 were introduced before an examiner of the Commission theretofore duly designated by it. Thereafter, on September 20, 1944, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent and Richard P. Whiteley, Assistant Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, might be made a part of the record herein and in connection with the testimony and other evidence already received might be taken as the facts in this proceeding and in lieu of further testimony in support of or in opposition to the charges of the complaint, and that the Commission might proceed upon said complaint, testimony and other evidence, and the stipulated facts, to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, and the stipulated facts, said stipulation having been approved, accepted, and filed; 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, Louis Goldberg, formerly traded as an individual, under the names "Acme" and "Acme Mail Order House," at

164 Henry Street, New York, N. Y., and now has associated with him as a partner in said business his brother, Isidore Goldberg, and with said brother is operating under the aforesaid trade names the business hereinafter described at 120 East Broadway, New York, N. Y.

PAR. 2. The respondent is now, and for several years last past has been, engaged in the sale and distribution of used, worn, or second-hand clothing which is bought by his customers both for their own use and for resale. Respondent causes said clothing, when sold, to be transported from his place of business in New York to purchasers at their respective points of location in various other States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said clothing in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his said products, respondent has made false and misleading statements and representations with respect to the physical condition and fiber content thereof by means of insertions in newspapers having general circulation throughout the United States and in catalogs disseminated to purchasers and prospective purchasers through the United States mails. Among and typical of the false and misleading statements and representations so used and circulated are the following:

Ten slightly used, stylish silk dresses, cleaned, ready to wear, \$3 (send \$1, balance C.O.D.); free 32-page catalog; agents wanted. Acme, 164 Henry St., Dept. E, New York City.

* * * * *

Spectacular bargains in women's and misses' silk dresses . . . cleaned and pressed and ready for wear.

* * * * *

SLIGHTLY USED AND BRAND NEW MERCHANDISE FROM BANKRUPT AND CLOSEOUT SALES.

* * * * *

TEN Silk DRESSES \$3.45

CLEANED—PRESSED—READY TO WEAR . . .

Buy them for yourself. Buy them to sell.

* * * * *

ACME PRESENTS THIS 4 **** special to our preferred customers
LADIES' AND MISSES' SLIGHTLY USED SILK DRESSES.

* * * * *

A stunning assortment of silks, crepes, satins and georgettes in the latest styles.

* * * * *

Men's Super Quality ALL WOOL OVERCOATS.

* * * * *

All merchandise which is not listed new is cleaned, pressed, repaired and ready to wear.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning not set out herein, the

respondent has represented that his said products are only slightly used; that the dresses which he offers for sale consist of all-silk material; that much of his said merchandise is brand new and is obtained from bankrupt and close-out sales; that the men's overcoats which he offers for sale are made of all-wool fabrics; and that all merchandise sold by respondent which is not represented as new is cleaned, pressed, repaired, and ready to be worn.

PAR. 5. In truth and in fact, the aforesaid statements and representations disseminated by respondent are false, misleading, and deceptive. Many of the respondent's said products described as "slightly used" are in an advanced state of wear and use. Many of the dresses described by respondent as "silk" are in fact composed in whole or in part of rayon or materials other than silk. Very little of the merchandise offered by respondent is new, and the bulk of the products offered do not come from bankrupt or close-out sales. The men's overcoats which respondent advertises as "All Wool" in fact consist in part of cotton. Not all of the merchandise which respondent does not represent as new is in fact cleaned, pressed, repaired, and ready to be worn.

PAR. 6. In addition to the misrepresentations hereinabove set out, the respondent has engaged in the use of false, deceptive, and misleading methods in his said business by failing to disclose either in said advertising or by the use of tags and labels or other markings on said merchandise that certain of said products are second-hand or previously used or worn.

PAR. 7. The aforesaid acts and practices of respondent have had, and have, the capacity and tendency to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and, because of such erroneous and mistaken belief, induce the purchase of substantial quantities of respondent's said products.

CONCLUSION

The 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, the answer of respondent, certain testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, and a stipulation as to the facts entered into between the respondent and Richard P. Whiteley, Assistant Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondent findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Louis Goldberg, trading as "Acme" or "Acme Mail Order House," or under any other name, his representatives,

agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of clothing or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

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

3. Representing that the proportion of new and unused merchandise offered by respondent is greater than it is in fact, or that the proportion of respondent's merchandise obtained from bankrupt or close-out sales is greater than it is in fact.

4. Representing that garments in an advanced state of wear are only slightly used or that the condition of used or second-hand garments is materially better than it is in fact.

5. Representing that used or second-hand garments have been cleaned, pressed, or repaired, unless such garments have in fact been cleaned, pressed, or repaired.

6. Representing that any used or second-hand garment is new or unused by failing to disclose, clearly and unequivocally, that it is used or second-hand, or by failing to attach securely to such garment a tag or label or place thereon a stamp, which tag, label or stamp clearly and conspicuously reveals that said garment is used or second-hand.

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

IN THE MATTER OF
JOSEPH TRINER CORPORATION

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

Docket 5227. Complaint, Sept. 28, 1944—Decision, June 27, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of a medicinal preparation variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixir of Bitter Wine"—

- (a) Falsely represented by radio continuities and through advertisements in magazines and newspapers, that said preparation was a cure or remedy for stomach disorders, poor appetite, faulty digestion, headache, nervousness, fatigue, and insomnia; and that it cleansed the stomach and intestines and kept the intestines clean, raised the general vitality of the body, and increased the resistance of the body to germs, thereby preventing colds;

When in fact it had no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation; and

- (b) Failed to reveal facts material in the light of its representations and with respect to consequences which might result from use of said preparation under usual or prescribed conditions in that, as a laxative, it was potentially dangerous when taken by one suffering from abdominal pain, nausea or other symptoms of appendicitis;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said preparation might be used at all times without ill effects, and thereby into the purchase of 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 or deceptive acts or practices in commerce.

Mr. Joseph Callaway for the Commission.

Kerner, Jaros & Tittle, of Chicago, Ill., 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 the Joseph Triner Corporation, 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, Joseph Triner Corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Illinois with its principal place of business located at 1333-1345 South Ashland Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of a certain medicinal preparation, variously designated as "Triner's Bitter Wine," "Triner's Bitter Wine with Vitamin B₁" and "Triner's American Elixir of Bitter Wine."