

Complaint

IN THE MATTER OF

AMASIA IMPORTING CORPORATION

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

Docket 4459. Complaint, Feb. 4, 1941—Decision, Sept. 16, 1946

Where a corporation engaged in the manufacture of corsets and foundation garments for women, some made entirely of cotton yarn and others of cotton elastic yarn combined with lisle, rayon or silk, and in the interstate sale and distribution thereof, said products to and through department stores and other retailers—

Represented, directly and by implication, that its said garments were composed of silk, the product of the cocoon of the silk worm, through use of trade name "Silk Skin" to designate and describe them, irrespective of composition, in advertisements in newspapers and periodicals and in advertising copy for use in retailers' own advertisements, and in circulars and other printed matter, and on tags and labels attached to said products and to the containers thereof, and set forth in much smaller type, on such tags and boxes and also in various advertising, the notation "80% to 100% elastic yarn combined with lisle, rayon or silk";

The facts being none of the garments thus designated and described contained in excess of 20 percent silk fiber and many contained no silk at all; during the years 1941 and 1942 the percentage of its "Silk Skin" foundation garments which actually contained silk fiber in addition to the elastic yarn constituted 15 percent of its total volume of sales of such garments; a second label which stated the purported percentages of elastic and lisle, rayon, or silk, was hidden underneath the primary label and was not readily discernible or noticed by a purchaser; and such representations as to fiber content were misleading in that its method of calculation made no break-down as between the cotton wrapping and the rubber core of the elastic yarn;

With capacity and tendency to mislead and deceive a substantial portion of the consuming public into the erroneous belief that such false representations were true, and thereby cause it to purchase said garments:

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

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

Mr. S. F. Rose for the Commission.

Mr. I. Gainsburg, 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 Amasia Importing Corp., a corporation, hereinafter referred to as the respondent, has violated the provisions of the said act, and it appearing to the Com-

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mission 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, Amasia Importing Corp., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its main office at 10 East Thirty-ninth Street in the city of New York, State of New York.

PAR. 2. The respondent is now, and for more than 5 years last past has been, engaged in the business of manufacturing, selling, and distributing corsets and foundation garments for women. Respondent sells its merchandise to department stores and other retail dealers and causes said merchandise when sold, to be transported from its said 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 merchandise 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 business, the respondent uses the trade name "Silk Skin" to designate and describe all of its corsets and foundation garments irrespective of the materials of which such garments are actually made. Some of these garments are made entirely of a cotton elastic yarn, others are made of a cotton elastic yarn combined variously with either lisle, rayon, or silk. For the purpose of inducing the purchase of its garments by retailers for resale and by members of the purchasing public for use, respondent has made use of and now uses, various types of advertising matter purporting to be descriptive of its said "Silk Skin" garments and their quality and desirability. This advertising consists of advertisements in various newspapers and periodicals, advertising copy for use of retailers in their own advertising, circulars and other printed or written matter. In addition the respondent attaches to such garments labels and tags containing the trade name "Silk Skin." On the boxes in which said garments are sold and on tags attached to said garments appear in large and conspicuous type the term "Silk Skin" and, in much smaller type, the notation "80% to 100% elastic yarn combined with lisle, rayon, or silk." This notation also appears in various advertising. Neither the advertising literature nor the statements on the boxes in which the garments are offered for sale to the ultimate purchaser, nor the paper tags affixed to the various garments, nor the primary cloth label affixed to such garments, differentiate in any manner between the different types of garments containing various combinations

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of the fibers hereinabove mentioned. Underneath the primary label containing the trade name "Silk Skin" affixed to the garments appears another label stating the purported percentages of elastic and lisle, rayon, or silk as the case may be. This label is hidden underneath the primary label and is not readily discernible or noticed by a purchaser of said garments.

PAR. 4. Through the use of the name "Silk Skin" to designate and describe its products, the respondent, represents directly and by implication that its garments are composed of silk, the product of the cocoon of the silkworm.

In truth and in fact none of the silk garments contain in excess of 20 percent silk fiber and many contain no silk at all. Over a period of many years the word "silk" has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities.

In addition, various of the garments do not contain the percentages of lisle, rayon, or silk as represented on the secondary cloth label hidden underneath the primary cloth label but contain percentages of such fabrics other than and different from the amount so represented.

PAR. 5. In addition to the above acts and practices the respondent has also represented through its business stationery that it has branch houses or factories located in Paris, France; Berlin, Germany; London, England; Shanghai, China; and other foreign cities, when, in truth and in fact, the respondent does not own, operate, maintain or have any controlling interest in any branch house or factory located in the aforesaid cities or in any other foreign city. Such misrepresentation has the capacity and tendency to give respondent a prestige with the prospective purchasers to which it is not entitled.

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations and advertisements disseminated as aforesaid with respect to said merchandise and business, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such false statements, advertisements and representations are true, and to cause, and does cause, a substantial portion of the public to purchase respondent's garments under such mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent 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 February 4, 1941, issued and thereafter served its complaint in this proceeding upon the respondent, Amasia Importing Corp., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, a stipulation was entered into and incorporated in the record of this case, whereby it was stipulated and agreed by the counsel for the respondent and the counsel for the Federal Trade Commission, subject to the approval of the Commission, that said stipulation might be taken as the facts in this proceeding in lieu of testimony in support of, or in opposition to, the charges stated in the complaint and that the Commission might proceed upon said complaint and statement of facts to make its reports, stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved and accepted; and the Commission, having duly considered the matter and now being 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, Amasia Importing Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office at 10 East Thirty-ninth Street in the city of New York, State of New York.

PAR. 2. The respondent is now, and for more than 5 years last past has been, engaged in the business of manufacturing, selling, and distributing corsets and foundation garments for women. Respondent has sold its merchandise to department stores and other retail dealers and causes said merchandise, when sold, to be transported from its said 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 has maintained a course of trade in said mer-

chandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of conduct of its business, the respondent has used the trade name, "Silk Skin," to designate and describe all of its corsets and foundation garments irrespective of the materials of which such garments are actually made. Some of these garments have been made entirely of a cotton elastic yarn, other are made of a cotton elastic yarn combined variously with either lisle, rayon, or silk. For the purpose of inducing the purchase of its garments by retailers for resale and by members of the purchasing public for use, respondent has made use of various types of advertising matter purporting to be descriptive of its said "Silk Skin" garments and their quality and desirability. This advertising has consisted of advertisements in various newspapers and periodicals, advertising copy for use of retailers in their own advertising, circulars, and other printed or written matter. In addition the respondent has attached to such garments labels and tags containing the trade name "Silk Skin." On the boxes in which said garments have been sold and on tags attached to said garments have appeared in large and conspicuous type the term "Silk Skin" and, in much smaller type, the notation "80% to 100% elastic yarn combined with lisle, rayon, or silk." This notation also has appeared in various advertising. Neither the advertising literature nor the statements on the boxes in which the garments have been offered for sale to the ultimate purchaser, nor the paper tags affixed to the various garments, nor the primary cloth label affixed to such garments, have differentiated in any manner between the different types of garments containing various combinations of the fibers hereinabove mentioned. Underneath the primary label containing the trade name "Silk Skin" affixed to the garments has appeared another label stating the purported percentages of elastic and lisle, rayon, or silk, as the case may be. This label has been hidden underneath the primary label and has not been readily discernible or noticed by a purchaser of said garments.

PAR. 4. Through the use of the name "Silk Skin" to designate and describe its products, the respondent represents directly and by implication that its garments are composed of silk, the product of the cocoon of the silkworm.

In truth and in fact none of the garments described by the trade name "Silk Skin" have contained in excess of 20 percent silk fiber and many have contained no silk at all. During the years 1941 and 1942, the percentage of "Silk Skin" foundation garments which actually contain silk fiber in addition to the elastic yarn constituted 15 percent

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of the respondent's total volume of sales of garments bearing the name "Silk Skin."

Over a period of many years the word "Silk" has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as denoting the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities.

There are two methods by which the relative fiber content of respondent's foundation garments can be calculated. When the cotton thread in which the rubber is wrapped is not considered separate from the rubber which it encloses, respondent's representations as to the relative amount of cotton, lisle, rayon and silk contained in such garments are substantially correct. If the method of calculation of the relative amount of each fiber contained in the garment is upon the basis of separating the cotton wrapping for the rubber core to the elastic yarn, then respondent's representations are misleading. Respondent's method of calculating the relative fiber content did not make any break-down beyond describing it as elastic.

PAR. 5. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements disseminated as aforesaid with respect to said merchandise and business has the capacity and tendency to mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such false statements, advertisements and representations are true, and to cause such portion of the public to purchase respondent's garments under such mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent 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 a stipulation as to the facts entered into between counsel for the respondent and counsel for the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure, the Commission might make its findings as to the facts and its conclusion

based thereon and enter its order disposing of the proceeding; 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, Amasia Importing Corp., a corporation, and its officers, agents, representatives, and employees, directly, or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of corsets and foundation garments, do forthwith cease and desist from:

Using the term "Silk Skin" or any other term or word or words of similar import, 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 silk, the product of the cocoon of the silkworm; *Provided, however*, that in the case of a product composed of a substantial part of silk and in part of other fibers or materials, such terms may be used as descriptive of the silk content of such product if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating such other constituent fibers or materials.

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

SIDNEY E. BLUMENTHAL, HARRY J. BLUMENTHAL AND
MRS. RUBY S. BLUMENTHAL, TRADING AS BLUMEN-
THAL PRINT WORKSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5142. Complaint, Mar. 25, 1944—Decision, Sept. 23, 1946*

Where three individuals engaged in the buying and interstate sale and distribution to mattress manufacturers and to dealers for resale to the public, of mattress ticking and other cloth fabrics, a substantial portion of which was piece goods finished to their order—

Falsely represented through statements on labels attached to said products and in circulars, catalogs, and other advertising media, that their mattress ticking and fabrics were sterile, sanitary, antiseptic, odorless, and bacteriostatic, and bacteria-, germ- and water-repellent, prevented perspiration odors; and wore longer and were a guard against the spread of infection;

With tendency and capacity to mislead and deceive a substantial number of mattress manufacturers, dealers, and members of the purchasing public, and thereby to cause them to purchase their products, or mattresses in which said products had been used:

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. John W. Addison*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Isaac S. Heller, of New Orleans, La., 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 Sidney Blumenthal, Harry J. Blumenthal, and Mrs. Ruby S. Blumenthal, individually and trading as Blumenthal Print Works, 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. Respondents Sidney E. Blumenthal, Harry J. Blumenthal, and Ruby S. Blumenthal are individuals, trading under the name Blumenthal Print Works, with their principal office and place of business at 425 Godchaux Building, New Orleans, La.