

Complaint

44 F. T. C.

IN THE MATTER OF

ISIDORE LUSTERMAN AND EDWARD E. SELDIS, CO-
PARTNERS TRADING AS LUSTERMAN, SELDIS COM-
PANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5443. Complaint, June 14, 1946—Decision, Aug. 20, 1947

Where two partners engaged in the interstate sale and distribution of umbrellas, including some the covers of which were composed in whole or in part of rayon and simulated in texture and appearance products composed wholly or in part of silk—

Offered and sold said products without disclosing that they were composed wholly or in part of said chemically manufactured fiber;

With result that many members of the purchasing public were thereby lead to believe that such products were composed of silk or other natural fibers, and of placing in the hands of purchasers for resale a means whereby they might and did mislead and deceive the purchasing public as to the actual fiber content thereof; whereby substantial quantities thereof were purchased as and for products made wholly or chiefly of silk or other natural fibers:

Held, That such acts, practices and methods, 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.

Mr. DeWitt T. Puckett for the Commission.

Lawer, Shapiro & Lauter, 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 Isidore Lusterman and Edward E. Seldis, individually and as copartners trading as Lusterman, Seldis Co., 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. The respondents Isidore Lusterman and Edward E. Seldis are copartners trading and doing business as Lusterman, Seldis Co. and have their principal office and place of business at 5 West Thirty-sixth Street, New York, N. Y. Respondents are now and for

more than 1 year last past have been engaged in the sale and distribution of umbrellas.

Respondents cause their said products when sold, or to be sold, to be transported from their said place of business in the State of New York to the 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 said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Among the products offered for sale and sold by the respondents in commerce as aforesaid are some which are composed wholly or in part of rayon.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance, and fabrics manufactured from such rayon fibers simulate natural-fiber fabrics in texture and appearance. Products manufactured from such rayon fabrics may have the appearance and feel of natural-fiber products, and many members of the purchasing public are unable to distinguish between such rayon products and products manufactured from natural fibers; consequently, such rayon products are readily accepted by some members of the purchasing public as natural-fiber products.

PAR. 4. Some of the products sold by respondents in commerce, as aforesaid, simulate in texture and appearance products composed wholly or in part of silk. Respondents do not inform the purchasers of their said products or the purchasing public of the fact that the products which resemble silk in texture and appearance are made wholly or in part of rayon and not of silk or other natural fibers.

PAR. 5. The practice of the said respondents in offering for sale and selling said products manufactured wholly or in part of rayon which resemble in texture and appearance products manufactured from silk or other natural fibers, in commerce as aforesaid, without disclosing, in words familiar to the purchasing public, the fact that said products are composed wholly or in part of rayon is misleading and deceptive and many members of the purchasing public are thereby led to believe that said products are composed wholly or in part of silk or other natural fibers.

PAR. 6. The use by the respondents of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive purchasers of respondents' said products as to the true fiber content thereof. By said acts and practices respondents also place in the hands of the purchasers of their said products for resale to the pur-

chasing public a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the actual fiber content of said products. As a result of the aforesaid deception substantial quantities of respondents' said products are purchased in the belief that they are made wholly or chiefly of silk or other natural fibers.

PAR. 7. The aforesaid acts, practices and methods of 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 June 14, 1946, issued and subsequently served its complaint in this proceeding upon respondents Isidore Lusterman and Edward E. Seldis, individually and as copartners trading as Lusterman, Seldis Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 20, 1946, the respondents filed their answer, in which they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, this 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. The respondents, Isidore Lusterman and Edward E. Seldis, are copartners trading and doing business as Lusterman, Seldis Co., with their principal office and place of business at 5 West Thirty-sixth Street, New York, N. Y. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of umbrellas.

PAR. 2. Respondents cause their said products, when sold or to be sold, to be transported from their said place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and have maintained, a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the products offered for sale and sold by the respondents in commerce, as aforesaid, are some which are composed wholly or in part of rayon. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate natural fibers in texture and appearance, and fabrics manufactured from such rayon fibers simulate natural-fiber fabrics in texture and appearance. Products manufactured from such rayon fabrics may have the appearance and feel of natural-fiber products, and many members of the purchasing public are unable to distinguish between such rayon products and products manufactured from natural fibers; consequently, such rayon products are readily accepted by some members of the purchasing public as natural-fiber products.

PAR. 4. Some of the products sold by respondents in commerce, as aforesaid, simulate in texture and appearance products composed wholly or in part of silk. Respondents do not inform the purchasers of their said products, or the purchasing public, of the fact that the products which resemble silk in texture and appearance are made wholly or in part of rayon and not of silk or other natural fibers.

PAR. 5. The practice of the said respondents in offering for sale and selling, in commerce as aforesaid, said products manufactured wholly or in part of rayon which resemble in texture and appearance products manufactured from silk or other natural fibers without disclosing, in words familiar to the purchasing public, the fact that said products are composed wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that said products are composed wholly or in part of silk or other natural fibers.

PAR. 6. The use by the respondents of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive purchasers of respondents' said products as to the true fiber content thereof. By said acts and practices respondents also place in the hands of the purchasers of their said products for resale to the purchasing public a means and instrumentality whereby they may, and do, mislead and deceive the purchasing public as to the actual fiber content of said products. As a result of the aforesaid deception, substantial quantities of respondents' said products are purchased in the belief that they are made wholly or chiefly of silk or other natural fibers.

CONCLUSION

The aforesaid acts, practices, and methods of respondents, as herein found, are all to the prejudice and injury of the public and constitute

Order

44 F. T. C.

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 respondents, in which answer respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Isidore Lusterman and Edward E. Seldis, individually and as copartners trading as Lusterman, Seldis Co., or under any other name, their respective representatives, agents, or employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, any umbrellas or other articles made in whole or in substantial part of a fabric composed of rayon, without clearly and conspicuously disclosing such rayon content in all invoices and by means of labels, tags, or other markings securely affixed to such article; and when such fabric is composed in part of rayon and in part of other fibers or materials, all such fibers or materials including the rayon, shall be disclosed in the manner and by the means set forth above.

It is further ordered, That 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.

Syllabus

IN THE MATTER OF

RONALD GAGE DAVIS, TRADING AS THE SPARTAN
COMPANY, AND DOROTHY LEFOLDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914*Docket 5414. Complaint, Jan. 9, 1946—Decision, Aug. 22, 1947*

Where an individual who engaged in 1941 as a war enterprise, in interstate sale and distribution primarily to jobbers and chain stores, of pocket size games, such as checkers, cribbage, gin rummy, baseball, bowling, backgammon, etc., under the trade name "Checkmates"; and, upon the subsidence of demand for said products in the latter part of 1943 discontinued all advertisements relating thereto, and thereafter disposed of inventories as and when opportunity occurred; and his sales manager and sole distributor for the products herein concerned—

Represented falsely that they owned, operated, or controlled a factory in which the products sold by them were made, through use of the statement in their advertising, "the Spartan Company, 1498 Merchandise Mart, Chicago, Factory, Minneapolis, Minnesota";

With tendency and capacity to mislead and deceive purchasers, a substantial portion of whom markedly prefer to buy direct from manufacturers, and cause them to buy a substantial number of said products in the erroneous belief that they were so dealing direct:

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.

In a proceeding in which it was alleged that respondents—who were engaged, as a war enterprise, in the sale and distribution of certain pocket-size games to jobbers and chain stores primarily, making no sales direct to the general public—falsely represented that their products were bound in leather through the use of the term "leatherette" in describing the binding, the Commission found, on the basis of testimony introduced in said proceeding, that the material of which the binding in question was composed was in fact thus known to the trade, i. e., as "leatherette".

In said proceeding in which it was further alleged that said respondents represented through the use of the seal of the United States embossed upon their said pocket-size games that such products had been approved or sponsored by the United States Government, the Commission found that the use of such seal and other military insignia was a common practice in connection with articles designed and sold for use of servicemen during the war, and did not constitute such a representation.

In said proceeding in which it was still further alleged that said respondents falsely represented, through the use in advertising of the statement "tweed mailing carton", that their said pocket-size games were covered with tweed, the Commission also found that such use of said term under the circum-