

Syllabus

IN THE MATTER OF
BENJAMIN ROSENBERG, DOING BUSINESS AS
EUNICE 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 5170. Complaint, June 2, 1944—Decision, Feb. 24, 1948

Where an individual engaged in the interstate sale and distribution of new, old, worn, and previously used articles of clothing of all types; through statements in catalogs, circulars, and other advertising material—

- (a) Represented that much of his merchandise was new, that the rest was only slightly used, and that any of said merchandise which needed it, had been cleaned, repaired, and pressed, and that all of it had been put in good condition for wear;

The facts being that many of the articles were in such a worn condition as to be unsuitable for wear, certain others were worn, torn, dirty, and dilapidated, and some of it was sold in a soiled condition without having been cleaned, repaired, or pressed;

- (b) Falsely represented that much of his merchandise had been obtained at bankrupt or stores' close-out sales; when in fact little if any had been thus obtained, and most of it was purchased from second-hand clothing dealers, peddlers, junk shop, and charitable institutions such as the Salvation Army and Yeshiva;

- (c) Falsely represented that certain dresses advertised as "silk dresses," were made wholly of silk, the product of the cocoon of the silkworm, when in fact they were composed in whole or in part of rayon or of materials other than silk;

- (d) Represented that certain of his dresses were new, obtained from New York's leading department stores, and made of the best material, through such expressions as "ladies' new dresses," "close-outs from New York's leading department stores," and "made of finest material," and thereby gave such merchandise a value in the minds of the purchasing public which it did not merit and would not otherwise have;

The facts being that a substantial portion of the dresses advertised as "new dresses," etc., were not new, nor obtained from such source, but were worn, inexpensive dresses made of ordinary or inferior materials;

- (e) Represented that purchasers of his said merchandise were regularly sent the sizes of dresses, suits, or other garments they ordered and that he guaranteed, upon request of any dissatisfied purchaser, to return promptly the money paid;

The facts being that many purchasers did not receive the sizes they ordered, since a substantial portion of his merchandise was purchased second-hand and contained no size numbers; and not all dissatisfied customers were refunded their money upon request;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with effect of inducing thereby its purchase of his said products:

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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.

In said proceeding in which it did not affirmatively appear that the second-hand merchandise in question was so renovated or refinished as to permit its being passed off as new by purchasers for resale, or that in the circumstances of the case there was necessity for disclosing the fabric content of second-hand merchandise, provided there was no affirmative misrepresentation of such content, no findings were made pursuant to the charges of the complaint, respecting failure to tag or label the same.

Before *Mr. John W. Addison* and *Mr. Randolph Preston*, trial examiners.

Mr. John M. Russell for the Commission.

Zager, Fields, Zimmerman, Skodnick & Segall, of Jamaica, N. Y., 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 Benjamin Rosenberg, an individual, trading and doing business as Eunice 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, Benjamin Rosenberg, is an individual trading and doing business as Eunice Mail Order House, with his principal place of business located at 197 Division Street 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 the District of Columbia, of new and old, worn, and previously used articles of clothing, including dresses, men's and boys' suits and overcoats, to the purchasing public. Respondent causes his said merchandise, when sold, to be transported from his said place of business in the State of New York to the purchasers thereof at their respective points of location in the various 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 between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said merchandise, respondent has made and is now making false and misleading statements and representations with respect to its condition and fiber content and as to the source of his supply and the quality of certain articles thereof, by means of advertisements published in newspapers and magazines distributed throughout the United States, and in catalogs, circulars, and other advertising material circulated and distributed by respondent among the purchasing public throughout the United States and in the District of Columbia. Among and typical of such false and misleading statements and representations disseminated and caused to be disseminated as aforesaid are the following:

10 SILK DRESSES

practically \$2.95

BRAND NEW

Late styles, all sizes.

Cleaned, pressed, just slightly used.

\$5 each when new!

10 SILK DRESSES \$1

Many styles, assorted sizes only, slightly used * * *

Satisfaction guaranteed. Send for FREE CATALOG clothing family of 3 for \$4.50—shoes, hats, suits, army clothes, etc.

SLIGHTLY USED AND BRAND NEW BANKRUPT
AND PAWNBROKERS MERCHANDISE

WONDER VALUES

MEN'S QUALITY SUITS * * *

ALL WOOL. * * * * *

ALL SIZES * * * * *

Fine quality * * * * * up-to-the-minute in
styles * * * *. Cleaned, pressed, and repaired.

* * * * *

GRADE A

\$3.75

GRADE B

\$2.95

Ladies' NEW DRESSES

Close-outs from New York Leading Department Stores.

Assorted Sizes * * *. Made of finest materials.

. \$1.59 ea.

3 for \$4.60

* * * The following pages contain

BRAND NEW MERCHANDISE

(never used).

SATISFACTION GUARANTEED

You can buy with the assurance that you must be completely satisfied with every purchase you make or your money will be refunded immediately.

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PAR. 4. Through the use of said statements and representations, and others of similar import and meaning not set out herein, made by respondent and by others at his instance or suggestions, respondent directly or indirectly represents that much of his merchandise is new; that all of the rest is only slightly used; that any of said merchandise needing it has been cleaned, repaired and pressed; that all of it is in good condition for wear; that much of said merchandise has been obtained by respondent at bankrupt or stores' close-out sales; that respondent's said ladies' dresses advertised as "silk dresses" are made wholly of silk, the product of the cocoon of the silk worm; that certain of respondent's said dresses are new, obtained from New York's leading department stores, and are made of the best material; that purchasers of said merchandise are regularly sent the sizes of dresses, suits, coats and other garments they order; that respondent guarantees, upon request of any dissatisfied purchasers of said merchandise, to return promptly the money paid therefor.

PAR. 5. The foregoing statements and representations are false, deceptive, and misleading. Very little of respondent's said merchandise is new. Many of the articles of said merchandise are in such a worn condition as to be unsuitable for wear, and certain other articles thereof are worn, torn, and dilapidated. Practically none of respondent's said merchandise is cleaned, repaired, or pressed. Little, if any, of it has been obtained at bankrupt or close-out sales but most thereof has been obtained from charity organizations, peddlers, junk shops, and dealers in second-hand clothes. Many of the dresses which respondent advertised as "silk dresses" are composed in whole or in part of rayon and of other materials than silk, the product of the cocoon of the silkworm. Respondent's said dresses advertised as new dresses from New York's leading department stores, and made of the best materials, are worn and inexpensive dresses made of ordinary or inferior materials. The purchasers of said merchandise are not regularly sent the sizes of dresses, suits, coats, or other garments they order, but it is only by chance if they obtain any of said sizes. Respondent does not refund money to any dissatisfied purchasers of said merchandise except occasionally when forced to do so to prevent disclosure of his said practices.

PAR. 6. The true facts are that the said dresses represented as silk dresses are composed of 25 percent silk and approximately 75 percent acetate rayon, which is not the product of the cocoon of the silkworm.

Said second-hand or used articles of merchandise are not stamped, labeled, or otherwise marked so as to indicate that they are used or

second-hand clothing, or so as to show their rayon, wool, silk, or other content.

By representing that certain of his said merchandise is made of silk as aforesaid, the respondent, by failing to disclose the rayon content of said merchandise which resembles silk, represents that said merchandise is composed entirely of silk, the product of the cocoon of the silkworm, whereas in truth and in fact, said merchandise is composed entirely or in part of rayon.

PAR. 7. The word "silk" has been long and favorably known to the purchasing public as descriptive of the goods made from the fiber derived from the product of the cocoon of the silkworm.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk. When manufactured to simulate silk it has the appearance and feel of silk. By reason of these qualities, rayon, when manufactured to simulate silk and not designated as rayon, is, by the purchasing public, practically indistinguishable from silk. Products manufactured from rayon, resembling silk, are accepted by the public as silk, even though such products may not be designated by terms representing that they are silk.

There is a preference among the purchasing public for clothes represented as made of "silk" as said product is generally known to the public for its superior quality and value.

PAR. 8. The use by respondent of the expressions, "ladies' new dresses, close-outs from New York's leading department stores, made of finest material," as aforesaid, deceives and misleads the public into the belief that respondent's said products are new dresses, made of the best materials, and gives the respondent's said merchandise a value in the minds of the purchasing public which it does not merit and would not otherwise have.

PAR. 9. The respondent's said false statements and representations made in the manner aforesaid, and his failure to label his said merchandise, are deceptive and misleading and have had, and now have, the capacity and tendency to, and do deceive and mislead members of the purchasing public into the erroneous and mistaken belief that all of respondent's said statements and representations are true. The respondent, by the use of his said statements and representations and his failure to label his second-hand or used merchandise as such, and his failure to label said merchandise as to the contents of the materials of which it is made, has placed in the hands of others who deal in respondent's said merchandise a means and instrumentality whereby they may deceive and mislead the ultimate purchasers thereof into the

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aforementioned erroneous and mistaken beliefs. As a result of the erroneous and mistaken beliefs induced by the respondent's acts, practices and representations, as herein alleged, respondent and said purchasers for resale of respondent's merchandise, have sold a substantial quantity of said merchandise to the purchasing public in commerce.

PAR. 10. The aforesaid acts, practices, and methods of respondent, as herein alleged, were and are in violation of the Federal Trade Commission Act, and 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 2, 1944, issued and subsequently served its complaint in this proceeding upon the respondent, Benjamin Rosenberg, an individual trading as Eunice Mail Order House, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the respondent filed his 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 by the Commission upon the complaint, the answer thereto, testimony, and other evidence, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by the respondent and no oral argument 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 respondent, Benjamin Rosenberg, is an individual trading and doing business as Eunice Mail Order House, with his principal place of business located at 197 Division Street, New York, N. Y. He is now, and for a number of years last past has been, engaged in the sale and distribution of new, old, worn, and previously used articles of clothing of all types.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes his said products, when sold, to be transported from

his place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing the purchase of his merchandise, respondent advertises in newspapers and magazines distributed throughout the United States and in catalogs, circulars, and other advertising material circulated and distributed by him among the purchasing public throughout the United States and in the District of Columbia. Among and typical of such statements and representations disseminated and caused to be disseminated are the following:

10 SILK DRESSES

practically

BRAND NEW

\$2.95

Late styles, all sizes.

Cleaned, pressed, just slightly used.

\$5 each when new

10 SILK DRESSES \$1

Many styles, assorted sizes only, slightly used * * *.
Satisfaction guaranteed. Send for FREE CATALOG
clothing family of 3 for \$4.50—shoes, hats, suits, army
clothes, etc.

SLIGHTLY USED AND BRAND NEW BANKRUPT
AND PAWNBROKERS MERCHANDISE

WONDER VALUES

MEN'S QUALITY SUITS * * *

ALL WOOL * * * * * * * *

ALL SIZES * * * * *

Fine quality * * * * * up-to-the-minute

in styles * * * *. Cleaned, pressed,

and repaired. * * * * *

GRADE A

\$3.75

GRADE B

\$2.95

Ladies' NEW DRESSES

Close-outs from New York Leading
Department Stores. Assorted Sizes

* * *. Made of finest materials.

\$1.59 ea.

3 for \$4.60

* * * The following pages contain

BRAND NEW MERCHANDISE

(never used).

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SATISFACTION GUARANTEED

You can buy with the assurance that you must be completely satisfied with every purchase you make or your money will be refunded immediately.

PAR. 4. Through the use of the above statements and others of similar import and meaning not set out herein, respondent represents that much of his merchandise is new; that all the rest is only slightly used and that any of said merchandise needing it has been cleaned, repaired, and pressed; and that all of it has been put in good condition for wear. He represents that much of his said merchandise has been obtained by him at bankrupt or stores' close-out sales; that said ladies' dresses advertised as "silk dresses" are made wholly of silk, the product of the cocoon of the silkworm; that certain of his dresses are new, obtained from New York's leading department stores, and are made of the best material. Respondent further represents that purchasers of said merchandise are regularly sent the sizes of dresses, suits, and other garments they order and that he guarantees, upon request of any dissatisfied purchaser of said merchandise, to return promptly the money paid therefor.

PAR. 5. The aforesaid statements and representations are false, deceptive, and misleading. Very little, if any, of respondent's merchandise is new. Many of the articles of said merchandise are in such a worn condition as to be unsuitable for wear, and certain other articles thereof are worn, torn, dirty, and dilapidated. Some of respondent's merchandise has been sold in a soiled condition without having been cleaned, or repaired, or pressed. Little, if any, of said merchandise has been obtained at bankrupt or close-out sales. Most of it is purchased from second-hand clothing dealers, peddlers, junk shops, and charitable institutions, such as the Salvation Army and Yeshiva. Many of the dresses advertised as "silk dresses" are composed in whole or in part of rayon or of materials other than silk, the product of the cocoon of the silkworm. A substantial portion of said dresses advertised as "new dresses from New York's leading department stores and made of the finest materials" are not new and are not obtained from this source but are worn, inexpensive dresses made of ordinary or inferior materials. Many purchasers of respondent's merchandise do not receive the sizes of coats, suits, or other merchandise which they order from him because a substantial portion of said merchandise is purchased second-hand and contains no size numbers. Not all dissatisfied customers are refunded their money upon request.

PAR. 6. The use by the respondent of the expressions "ladies' new dresses," "close outs from New York's leading department stores,"

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and "Made of finest material" gives to said merchandise a value in the minds of the purchasing public which it does not merit and would not otherwise have.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements, representations, and practices has had, and has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations made are true and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's merchandise.

CONCLUSION

The acts and practices of the respondent 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. Since it does not affirmatively appear that the second-hand merchandise sold by the respondent is so renovated or refinished as to permit its being passed off as new by purchasers for resale, or that in the circumstances of this case there is necessity for disclosing the fiber content of second-hand merchandise, provided there is no affirmative misrepresentation of such content, no findings have been made pursuant to the charges of the complaint respecting failure to tag or label second-hand merchandise.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Benjamin Rosenberg, trading as Eunice Mail Order House or under any other name, his 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 wearing apparel and other merchandise, including used,

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worn, or second-hand clothing, do forthwith cease and desist from representing directly or by implication:

1. That second-hand, used, or worn merchandise is new.
2. That the condition of second-hand, used, or worn merchandise is materially better than it is in fact.
3. That soiled or unrepaired or unpressed used merchandise has been cleaned or repaired or pressed, as the case may be; or otherwise representing that soiled or unrepaired merchandise has been put in good condition for wear.
4. That the source of merchandise offered for sale is other or different from the actual source from which such merchandise has been obtained.
5. That any garments or fabrics not composed wholly of silk, the product of the cocoon of the silkworm, are silk; or otherwise misrepresenting the fiber content of any garment or fabric.
6. That purchasers of used wearing apparel will receive the sizes ordered, unless in fact the sizes ordered are regularly furnished.
7. That money will be refunded to dissatisfied purchasers unless refunds are regularly and promptly made to such purchasers in accordance with the terms advertised.

It is further ordered, That the respondent shall, within 60 days after 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 it.

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IN THE MATTER OF

MERVIN E. LYONS, CLARENCE B. LYONS, AND IDA A. LYONS, DOING BUSINESS AS LYONS AND CO.

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

Docket 5207. Complaint, Aug. 26, 1944—Decision, Feb. 26, 1948

Where two individuals who were the largest distributors in the United States of "KIWI" shoe polish, imported from England and Australia—

Falsely represented that their said product would make shoes waterproof, through sale thereof in containers upon the lid of which appeared the legend "KIWI Thoroughly Waterproof Boot Polish," and through reproducing depictions of said container with the words "Thoroughly Waterproof" plainly visible thereon in their advertisements and in circulars, leaflets and other literature, distributed generally to the retail trade, and through the statement, also, in sales brochures for distribution to salesmen and occasionally to prospective retail purchasers, that "Waterproofing is another essential of the modern shoe polish; KIWI has it to a great degree";

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said polish would render shoes waterproof or completely impervious to water:

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 the representation "thoroughly waterproof," as applied to a shoe polish, was challenged, and in which the contention was made that the true meaning of the representation was that the polish would not dissolve in water, and that if applied to shoes which were thereafter subjected to water, the shine on the shoes might be restored by simply repolishing or rebuffing; and in which proceeding the testimony of a number of public witnesses showed that the words as used on the container and in the advertisements concerned did not possess the same meaning for all individuals, and in which it was agreed between respective counsel that regardless of the number of such witnesses who might be called and asked to give their impression on the point, half would testify under oath that to them the words meant that the polish, applied to their shoes, would make the same impervious to water, and the other half would testify that to them the words would mean that the polish, applied to their shoes could be regained if the shoes got wet, by merely buffing or rubbing; and in which it further appeared that the polish was only a temporary repellant of water depending for its effectiveness largely upon the amount applied, the penetration, and the quantity and force of the water to which the leather was subjected:

The Commission was of the opinion and found that the representation in question had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said polish, applied