

Syllabus

IN THE MATTER OF
AMERICAN VISCOSE CORPORATION

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

Docket 4862. Complaint, Oct. 30, 1942—Decision, Oct. 22, 1948

There are, in fact, no quality standards generally recognized, or used for grading rayon products.

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution of rayon fibers and yarns, chiefly to textile manufacturers and converters, was one of the largest producers of such products, and made use, in the operation of its business, of its "Quality Control Plan," designed to promote consumer acceptance of fabrics or garments made from its yarn—pursuant to which it entered into contracts with converters and manufacturers of finished products in which the fabric was composed of at least 50 percent of its said fibers, whereby (subject to the submission to it of samples for test and approval, and also of certain other information) the converter or manufacturer was authorized to make use of its "Crown Quality Control Plan" tags, labels or other marks of identification, which contained its "Crown" trade-mark, informed the consumer that the fabric concerned was "Crown Tested and Approved," contained "Crown" rayon, had been constructed and finished according to definite standards, and had been tested for specified characteristics such as tensile strength, seam strength, color-fastness, dry-cleanability or washability;

In widely publicizing certain aspects of its said plan, through such statements on said tags or labels furnished by it to others and in large numbers of advertisements in newspapers and periodicals with interstate circulation as:

"CROWN TESTED AND APPROVED RAYON FABRIC. WHAT DOES CROWN TESTED MEAN? It means that this fabric has been woven and finished according to high standards for consumer satisfaction. Samples of this fabric have been tested and approved by the Better Fabric Testing Bureau, Inc., official laboratory of the National Retail Dry Goods Association for tensile strength, seam strength, color-fastness and dry-cleanability;"

"What is the fabric content? 'Will this garment wash?' 'How will it wear?' 'How do I care for it?' 'Should it be dry cleaned?' These and dozen of other questions are being asked today by consumer groups from coast-to-coast. These and similar questions are asked seriously—They deserve serious and authoritative answers. The Crown Tested tag or label answers them seriously and with authority of the National Retail Dry Goods Association behind it for no merchandise containing rayon can bear the tag or label of Crown Tested identification unless it contains Crown Rayon and has been tested against consumer standards established by the National Retail Dry Goods Association and been approved by that Association's own laboratory;" and

"Crown tested identification enables you to give your customers the information they want: the information they are demanding and because

that information is furnished, not by individuals, not by a single organization, but by the greatest association of retailers in the United States, the Crown Tested tag carries serious authority;"

Represented that fabrics or garments bearing said "Crown Quality Control Plan" tags or labels had been tested and approved in accordance with consumer standards; that there were consumer standards generally recognized and adopted for testing and grading rayon; and that the products so labeled had met such consumer standards;

The facts being that while minimum specifications required to be met before its "Crown tested" labels could be used, did constitute a standard, it was a standard established and controlled by it and not established by said Dry Goods Association or Testing Bureau, and was not a consumer standard in that it was not established by consumers, representatives of consumers, or any official body authorized to establish consumer standards;

With capacity and tendency to mislead purchasers into the erroneous belief that such representations were true, and as a result induce purchase of rayon products concerning which such representations had been made, and thereby divert trade in commerce from its competitors who did not make such representations:

Held, That such false, misleading, and deceptive acts and practices were all to the prejudice of the public and of competitors of said corporation, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Consumer dissatisfaction with rayon fabrics and garments made therefrom, which said quality control plan was designated to eliminate, so far as practicable, while promoting consumer acceptance, as aforesaid, of fabric or garments made of fabrics produced with respondent's fibers or yarns, resulted in part from the different qualities of rayon fabrics as compared with fabrics made of other fibers, in characteristics such as tensile strength, shrinkage, washability, dry-cleanability, and seam slippage, and also from factors such as the grading down of quality for price by some fabric manufacturers and converters; or failure by some manufacturers of finished garments to make allowance in their manufacturing processes for the special characteristics of rayon; or the use of fibers for purposes for which they are not adapted.

As respects respondent's "Crown Quality Control Plan" and the absence of any quality standards generally recognized or used for grading rayon products, as involved in the instant proceeding, it appearing that upon or following the inauguration by respondent of its said plan minimum specifications were originally established by it in cooperation with said bureau, and with assistance and advice from many sources; that where recognized commercial standards for methods of testing, as distinguished from any quality or grade to be met, were applicable, such methods were used by the bureau; that in instances where there were no commercial standards for methods of testing, methods were developed and used; that minimum specifications first established were modified or changed from time to time upon respondent's own motion and at the suggestion of the bureau; that such suggestions were accepted or rejected by it depending upon its study of the proposal

and conclusion as to the practicability of manufacturing and selling merchandise under the suggested specification; that it thus exercised final and absolute authority with respect to the specifications which must be met before tags or labels of identification under its said plan could be used; and that reports of said bureau merely showed whether the fabric concerned was accepted or rejected under specifications thus framed:

The Commission found, as aforesaid, noted, that while said specifications did constitute a standard, it was one established and controlled by respondent and not by said Association or Bureau; was not a consumer standard, but a standard established by respondent after taking into account its interests, those of its customers and of their customers; and that while there were undoubtedly benefits to the consumer in the information and assurance provided by its tags and labels on fabrics tested and approved under its said plan, the standard was not established by or for consumers, but was controlled by its views as to the practicalities of manufacturing and merchandising fabrics made from its rayon products.

In said proceeding, in which the complaint also charged respondent with use of other false, deceptive and misleading acts and practices and unfair methods of competition, including the representation or implication that the marks of identification used by it under its plan were applicable to rayon products generally, including those made from yarns not manufactured by it; the record showed that advertisements concerning the plan in pamphlets which went to the trade were of such a nature as to inform it that the plan was applicable only to respondent's own rayon and that the trade was generally familiar with said facts; and that its advertising to consumers was under its name and generally indicated that it related to respondent's products; and that while there was some evidence of misunderstanding, it did not appear to have been due to respondent's acts.

As regards the allegation of the complaint in said proceeding that not all fabrics or garments to which identification tags or labels under said plan were attached had in fact been tested and approved in accordance therewith, and in which it appeared that T submitted to respondent samples of certain upholstery fabrics for testing, that the results were reported by the bureau to respondent, which notified T that fabrics concerned were not approved; that fabrics were, nevertheless, offered for sale by T with said tags or labels for identification under the plan; and that T was conversant with the requirements thereof: the Commission was of the view that respondent might not properly be held responsible for the misuse of its labels on said fabrics.

As regards the charge in said proceeding that respondent falsely represented that products bearing labels or tags under its plan had been tested and approved by an independent laboratory and found to conform to certain fixed and definite standards and specifications, and in which it appeared that most of the stock of the testing bureau concerned, represented by respondent as the official laboratory of the National Retail Dry Goods Association, was owned by its president, and the rest by said association, and that respondent had no ownership interest in or control over said bureau and was no more than a very substantial client thereof: the evi-

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dence made it clear that insofar as respondent was concerned, said bureau was an independent laboratory, and that the tests made by the bureau for respondent were in accordance with fixed and definite specifications, and that approval or disapproval was reported to the respondent in accordance with the results of such tests.

With respect to the charge that respondent furnished to converters, manufacturers and others, labels for use on fabrics composed in part of rayon and in part of other fibers, with the statement "Crown Tested and Approved rayon fabrics," and that the disclosure of fibers other than rayon was on the back of the labels and was not seen by the purchasers, it appeared that the tags and labels were of a number of types, depending upon whether they were to be attached on garments, to a bolt of cloth, or to fabrics in other forms of packaging, that in some instances the disclosure of fiber content other than rayon was on the same side of the tag or label that bore said description, and that in other instances was upon the reverse, but that in all instances it was so placed as to be readily accessible to purchasers or prospective purchasers of the article so tagged or labeled.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward L. Smith for the Commission.

Jackson, Nash, Brophy, Barringer & Brooks, 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 American Viscose Corp., hereinafter referred to as respondent, has violated the provision 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, American Viscose Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office in New York City, N. Y. It is now, and for more than 5 years last past has been, engaged in the manufacture of rayon yarns and staple fibers at its factories located in the States of Pennsylvania, Virginia, and West Virginia, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia, and it now causes, and for more than 5 years last past has caused, such products, when sold by it, to be shipped from its factories in the States of Pennsylvania, Virginia, and West Virginia to the purchasers thereof, some located in such States and others located in other States of the United States and in the District of Columbia. It

is now, and for more than 5 years last past has been, one of the largest, if not the largest, producer of rayon yarns in the world, and it is now, and at all times hereinafter mentioned has been, in substantial competition with other corporations and with individuals, firms and partnerships engaged in the sale and distribution of similar products between and among the various States of the United States and in the District of Columbia.

PAR. 2. The rayon yarn and other staple fibers so manufactured by the respondent and so sold by it in the commerce aforesaid are used by the purchasers thereof, chiefly textile and fabrics manufacturers and converters, for weaving and knitting by such purchasers into cloth, which cloth is sold by such textile and fabric manufacturers and converters in commerce between and among the various States of the United States and in the District of Columbia to manufacturers of garments and wearing apparel and parts of garments and wearing apparel.

PAR. 3. In the course and conduct of its business aforesaid, the respondent has entered into contracts or agreements with numerous textile fabric manufacturers and converters, under the terms of which, respondent authorizes the use by said manufacturers and converters, of labels and other forms of identification bearing the name "Crown" and the terms "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" on goods made in whole or in part of rayon yarns purchased only from said respondent; and said manufacturers and converters in and by said agreements and contracts agree with respondent not to attach such labels or other forms of identification upon any goods containing rayon manufactured by the said respondent, until samples of such goods have been tested and approved by Better Fabrics Testing Bureau, Inc., and notice to such effect has been received by such manufacturers and converters from the respondent. Such agreements and contracts also provide that respondent is to have the sole control over the purchasing, wording, form, and issuing of all labels or other forms of identification, which contain the mark or name "Crown" either in representation or words, and the terms "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested."

PAR. 4. In addition to the aforesaid use of the aforesaid labels by the respondent and by fabric manufacturers and converters of cloth made from yarn sold by the respondent, as aforesaid, the respondent, in the course and conduct of the commerce hereinabove described, and for the purpose of aiding in the sale of its rayon yarns and other staple fibers in the commerce aforesaid and of aiding in the sale of

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cloth, garments, other wearing apparel and parts of garments and of other wearing apparel made in whole or in part from rayon yarn and other staple fibers sold by respondent, has disseminated advertisements in commerce, by means of circulars or other advertising media containing claims or representations of which the following are typical:

CROWN TESTED AND APPROVED RAYON FABRIC

WHAT DOES CROWN TESTED MEAN?

It means that this fabric has been woven and finished according to high standards for consumer satisfaction. Samples of this fabric have been tested and approved by the Better Fabrics Testing Bureau, Inc., official laboratory of the National Retail Dry Goods Association for tensile strength, seam strength, colorfastness and dry cleanability.

Under the Crown Quality Control Plan, textiles containing Crown Rayon were, as they are today, tested to satisfy consumer standards established by the official laboratory of the National Retail Dry Goods Association—an impartial organization—an organization set up to serve, through its 6,000-odd member stores, the American people.

After such fabrics had passed those rigid tests and been approved, not by us, but by the Laboratory, they were, as they are today, identified with the symbol of Crown Tested Quality.

That today Crown Tested Quality is used as a standard of comparison for rayon merchandise proves the soundness of the plan initiated in 1930.

PAR. 5. In and by such labels, circulars and other advertising media, the respondent directly and by implication has represented and still represents that the terms "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved," and "Crown Tested" are independent marks of quality or identification applicable to any and all rayon products, the rayon content of which conforms to certain quality or grade requirements; that all of the fabric in every garment or article labeled "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" has been tested and approved in accordance with, and has met the requirements of specifications or standards recognized by competent authorities as being adequate; that products so labeled have been tested in accordance with "consumer standards" and that there are consumer standards generally recognized or adopted for testing and grading rayon, and that the products so labeled meet such "consumer standards"; that products so labeled have been tested and approved by an independent laboratory and conform to and comply with certain fixed and definite standards and specifications.

PAR. 6. In truth and in fact, the terms "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and

"Crown Tested" are marks of quality or identification of products manufactured from yarns produced only by respondent; in truth and in fact, no adequate means or procedure has been adopted or used by respondent to ascertain or determine that all of the goods or products of each and every weaver, converter, manufacturer or licensee using the aforesaid labels "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" have been tested or approved, or that all of the garments or other products bearing such labels are made from goods which have been tested and approved in accordance with, and have met the requirements of specifications or standards recognized by competent authorities as being adequate; and in truth and in fact, products bearing the aforesaid labels are not tested in accordance with any generally recognized or adopted consumer standards for testing and grading rayon. Products bearing said labels have not been tested or approved by an independent laboratory, nor do they conform to or comply with any fixed or definite standards and specifications. In truth and in fact, there are no specifications or standards recognized by competent authorities as being adequate for the testing of rayon products, nor is there any generally recognized or adopted "consumer standards" for testing and grading rayon.

PAR. 7. The aforesaid representations made by the respondent as set out in paragraphs three and four hereof have the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into the beliefs (1) that the terms "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" are quality designations applicable to rayon products generally, or products other than those made from yarns manufactured by the respondent: (2) that samples of all rayon fabrics labeled or designated "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" have been tested in accordance with and have met the requirements of specifications or standards recognized by competent authorities as adequate; (3) that rayon products labeled or designated "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved," and "Crown Tested" have been tested in accordance with generally recognized or adopted consumer standards for testing and grading rayon and have met such standards; (4) that rayon products labeled or designated "Crown," "Crown Tested Quality," "Tested Quality," "Crown Tested and Approved" and "Crown Tested" have been tested and approved by an independent laboratory and conform to and comply with certain fixed and definite standards and specifi-

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cations; (5) that specifications and standards recognized by competent authorities as being adequate for the testing of rayon products and recognized or adopted consumer standards are in existence and in use in the Rayon Industry for the testing of rayon products. Such representations have misled and deceived purchasers and still mislead and deceive purchasers and prospective purchasers into the erroneous beliefs the representations made by the respondent as set out in paragraphs three and four hereof above have been and are true, and induce them to purchase rayon and rayon products so labeled and represented, in such erroneous belief. Thereby substantial injury has been done and is being done by respondent to substantial competition in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 8. In the course and conduct of its business aforesaid, the respondent, for the purpose of aiding in the sale of its rayon yarns and other staple fibers in the commerce aforesaid, and for the purpose of aiding in the sale of fabric, cloth, garments, other wearing apparel and parts of garments and other wearing apparel made in whole or in part from rayon yarn and other staple fibers sold by the respondent, has furnished and still furnishes to knitters, weavers, spinners, and converters of cloth made in part from rayon yarn manufactured by respondent, labels bearing, conspicuously printed, the words "Crown Tested and Approved Rayon Fabrics" and bearing on the back of such labels, but not seen by the purchaser, words indicating the nature of fibers other than rayon also used in the manufacture of such fabrics and on cloth. Cloth and fabrics so labeled are sold, and are known by the respondent to be sold and are intended, with the knowledge of the respondent, to be sold, by the spinners, knitters, converters, and weavers thereof, in commerce between and among the various States of the United States and in the District of Columbia. The cloth and fabrics so labeled are not rayon but are composed not only of rayon but of other fibers and in many cases the fibers predominating by weight and in percentage are other than rayon. Such cloth and fabrics not made wholly of rayon but made also from other fibers, are being and have been advertised by the respondent in magazines of nation-wide circulation as "Crown Tested Rayon Fabrics" and as rayon fabrics and the respondent has sanctioned, approved and paid for advertisement by others of such cloths and fabrics as "Crown Tested Rayon Fabrics" and as rayon fabrics. Such labeling and advertising have the capacity and tendency to mislead and deceive, and have misled and deceived purchasers and prospective purchasers into the erroneous belief that the cloths and fabrics so labeled and advertised are rayon cloths

and fabrics, made solely of rayon, and induce them to purchase such cloths and fabrics so labeled and advertised, in such erroneous belief. Thereby substantial injury has been done and is being done by respondent to substantial competition in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and 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 October 30, 1942, issued and subsequently served its complaint in this proceeding upon respondent, American Viscose Corp., charging it with unfair methods of competition in commerce and 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 in support of and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the said complaint, answer, testimony, and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments of counsel; 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, American Viscose Corp., is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Wilmington, Del. It is now, and for many years last past has been, engaged in the manufacture and sale of rayon fibers and yarns. It is one of the largest producers of such fibers and yarns, and has been, and is, in substantial competition with other concerns engaged in the production and sale throughout the United States of similar products.

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PAR. 2. In carrying on its aforesaid business the respondent causes, and has caused, its said products, when sold by it, to be shipped from the point of production to purchasers thereof located in other states of the United States, and has maintained a course of trade in said products in commerce between and among the various States of the United States.

PAR. 3. Respondent's products are sold chiefly to textile manufacturers and converters for weaving and knitting into cloth, which cloth is sold by such textile manufacturers and converters in commerce between and among the various States of the United States to manufacturers of garments and wearing apparel and other users or resellers thereof. About 1930 the respondent inaugurated a "Quality Control Plan" applicable to finished fabrics made of rayon fibres or yarn produced by it. The plan was designed to promote acceptance of fabrics or garments made of fabrics produced with respondent's fibers or yarns and to eliminate, so far as practicable, consumer dissatisfaction with rayon fabrics and garments made therefrom. Such dissatisfaction had resulted in part from the differing qualities of rayon fabrics as compared with fabrics made of other fibers in characteristics such as tensile strength, shrinkage, washability, dry-cleanability, seam slippage, and also resulted from factors such as the trading down of quality for price by some fabric manufacturers and converters or from the failure by some manufacturers of finished garments to make allowance in their manufacturing processes for the special characteristics of rayon or from the use of fabrics for purposes for which they are not adapted. Respondent's plan was called the "Crown Quality Control Plan," the word "Crown" being respondent's trade-mark applicable to certain of its fibers and yarns. The plan provided for identification at the consumer level of fabrics and garments made from fabrics which had been tested and had met certain specifications. The tags or labels informed the consumer that the fabric, or the fabric from which a garment was made, was "Crown Tested and Approved"; that the fabric contained "Crown Rayon" and had been constructed and finished according to definite standards; and that it had been tested for specified characteristics such as tensile strength, seam strength, color-fastness, dry-cleanability, or washability. The mechanics of respondent's plan were that the respondent entered into contracts with converters and with manufacturers of finished products under which respondent granted the right to use on fabrics made of "Crown" rayon—or, in the case of mixed fibers, where the rayon used was "Crown" rayon and amounted to at least 50 percent of the fibers

used in the fabric—labels, tags, or other means of identification bearing the trade-marks “Crown” and the terms “Crown Tested” or “Crown Tested and Approved.” Under this contract the converter or manufacturer was required to submit to respondent a sample of each fabric intended to be so labeled, and he could not use any of the tags or labels on any such fabric until it had been tested and approved by or on behalf of respondent and the respondent had informed the other party thereof in writing. Respondent retained control over the phraseology, form, and issuance of all tags, labels, or other marks of identification containing the “Crown” mark. Converters or manufacturers desiring to use the plan were required to inform respondent of orders placed with fabric manufacturers of other source of supply of fabrics, including the yardage ordered, the construction of the goods, and the finishing plant to which the goods were to be sent.

PAR. 4. In order to make its “Quality Control Plan” effective, it was necessary for respondent to, and it did, widely publicize certain aspects of it. Typical of the representations made by respondent on tags or labels furnished by it to others and placed on fabrics and garments offered for sale and sold to the public are the following:

CROWN TESTED

and Approved

RAYON

FABRIC

WHAT DOES

CROWN TESTED MEAN?

It means that this fabric has been woven and finished according to high standards for consumer satisfaction. Samples of this fabric have been tested and approved by the Better Fabrics Testing Bureau, Inc., official laboratory of the National Retail Dry Goods Association for tensile strength, seam strength, colorfastness and dry cleanability.

* * * * *

CROWN TESTED

and

APPROVED

RAYON

FABRIC

WHAT DOES

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It means that fabrics containing Crown rayon and identified as Crown tested have been constructed and finished according to definite standards for consumers' satisfaction. Samples of the fabric have been tested and approved by the Better Fabrics Testing Bureau, Inc., official laboratory of the National Retail Dry Goods Association for fabric strength, seam strength, color fastness and washability.

In addition to the tags and labels, respondent caused to be published great numbers of advertisements relating to its plan in newspapers, magazines, and periodicals, all having interstate or national circulation. Among the advertisements so published and circulated by respondent, and illustrative of the type of representations made, are:

"Crown Tested" means that the fabric has been check-tested in accordance with standards established by the National Retail Dry Goods Association and approved by its official analytical laboratory, the Better Fabrics Testing Bureau, for washability or dry-cleanability (depending on type of fabric), color fastness, seaming strength, tensile strength, and various other important points of consumer satisfaction.

Consumers are asking these questions—asking them seriously. They must be answered.

The Crown Tested Tag answers them—not by guesswork, not by individual opinion—but by the results of tests made in accordance with consumer standards established by the National Retail Dry Goods Association and conducted by its own impartial, unbiased laboratory.

"What is the fabric content"?

"Will this garment wash"?

"How will it wear"?

"How do I care for it"?

"Should it be dry cleaned"?

These and dozens of other questions are being asked today by consumer groups from coast-to-coast.

These and similar questions are asked seriously—they deserve serious and authoritative answers.

The Crown Tested tag or label answers them, seriously and with the authority of the National Retail Dry Goods Association behind it. For no merchandise containing rayon can bear the tag or label of Crown Tested identification unless it contains Crown Rayon and has been tested against consumer standards established by the National Retail Dry Goods Association and then approved by that association's own laboratory.

Crown Tested identification enables you to give your customers the information they want: the information they are demanding. And because that information is furnished, not by an individual, not by a single organization, but by the greatest association of retailers in the United States, the Crown Tested tag carries serious authority.

PAR. 5. By means of the statements set out in the preceding paragraph, and other statements similar thereto, respondent has represented, directly and by implication, that fabrics or garments bearing tags or labels identifying the fabric as having been tested and approved under the "Crown quality control plan" have been tested and approved in accordance with consumer standards; that there are consumer standards generally recognized and adopted for testing and grading rayon; and that the products so labeled have met such consumer standards. As a matter of fact, these representations are false, deceptive, and misleading. Respondent did establish certain minimum specifications which were required to be met before tags or labels furnished under its "Crown Quality Control Plan" could be used, and samples of each such fabric were tested by Better Fabrics Testing Bureau, Inc., to ascertain whether or not they did in fact meet the minimum specifications in effect at the time, and the use of respondent's tags or labels was not authorized unless the fabric did meet such minimum specifications. The specifications were originally established in cooperation with Better Fabrics Testing Bureau, Inc., and with assistance and advice from many sources. Where recognized commercial standards for methods of testing, as distinguished from any specification of quality or grade to be met, were applicable, such methods were used by Better Fabrics Testing Bureau, Inc.; and in instances where there were no commercial standards for methods of testing, methods were developed and used. The minimum specifications first established by respondent in 1930 were from time to time modified or changed. Sometimes such changes were made upon respondent's own motion and sometimes at the suggestion of Better Fabrics Testing Bureau, Inc. When a proposal for change in specifications was made by Better Fabrics Testing Bureau, Inc., it was the policy and practice of respondent to analyze the proposal made and to analyze the conditions that existed in the trade with respect to the fabric in question, and, if the industry had advanced to the point of evolution in that particular fabric where it was practical to manufacture and sell merchandise under such a specification, respondent would agree to the change and notify Better Fabrics Testing Bureau, Inc., that it would abide by such change. On the other hand, if respondent did not find that it was a practical matter, in its opinion, to adopt the proposed change in specifications, Better Fabrics Testing Bureau, Inc., was advised accordingly. Respondent thus exercised final and absolute authority with respect to the specifications which must be met before tags or labels of identification under its "Quality Control Plan" could be used.

These were the specifications under which fabrics were tested by Better Fabrics Testing Bureau, Inc., and the reports of the bureau merely showed whether the fabric was accepted or rejected. These minimum specifications did constitute a standard, but it was a standard established and controlled by respondent and not established by the National Retail Dry Goods Association or by Better Fabrics Testing Bureau, Inc. It was not a consumer standard in that it was not established by consumers, representatives of consumers, or any official body authorized to establish consumer standards. There are, in fact, no quality standards generally recognized or used for grading rayon products. The standard used by respondent was established after taking into account its interests, the interests of its customers and of their customers. Although there were undoubtedly benefits to consumers in the information and assurance provided by respondent's tags and labels on fabrics tested and approved under its "Quality Control Plan," nevertheless, the standard was not established by or for consumers and was controlled by respondent's views as to the practicalities of manufacturing and merchandising fabrics made from its rayon products.

PAR. 6. The representations found to be false, deceptive, and misleading, as aforesaid, have had, and have, the capacity and tendency to mislead purchasers and prospective purchasers into the erroneous belief that such representations are true, and to induce, as a result of such erroneous belief, the purchase of rayon products concerning which such representations are made, and thus have the further capacity and tendency to divert trade in commerce from competitors of respondent who do not make like representations.

PAR. 7. The complaint in this proceeding alleged the use of other false, deceptive, and misleading acts, practices, and unfair methods of competition by respondent. It was alleged that respondent represented or implied that the marks of identification used under the "Crown Quality Control Plan" were applicable to rayon products generally, including those made from yarns not manufactured by respondent. The record shows that the advertisements concerning the plan in pamphlets which went to the trade were of such nature as to inform the trade that the plan was applicable only to respondent's "Crown" rayon, and that the trade was generally familiar with this fact. The advertising by respondent to consumers was under respondent's name and in general indicated that it related to respondent's products. There was some evidence of misunderstanding, but it does not appear to have been due to respondent's acts.

The complaint also alleges in substance that not all fabrics or garments to which identification tags or labels under the "Crown Quality Control Plan" are attached have in fact been tested and approved in accordance with the plan. The proof in support of this charge shows that J. H. Thorpe & Co. submitted to respondent samples of certain upholstery fabrics for testing under the "Crown Quality Control Plan"; that the samples were tested by Better Fabrics Testing Bureau, Inc., the results reported to respondent, and that respondent notified J. H. Thorpe & Co. that the fabrics in question were not approved; but that the fabrics were, nevertheless, offered for sale by J. H. Thorpe & Co. with tags or labels for identification under respondent's "Quality Control Plan." In this state of facts and with the showing that J. H. Thorpe & Co. was conversant with the requirements of the "Quality Control Plan," the Commission is of the view that respondent may not properly be held responsible for the misuse of its labels on these fabrics.

The complaint further charged that respondent represented that products bearing labels or tags under its "Crown Quality Control Plan" had been tested and approved by an independent laboratory and found to conform to certain fixed and definite standards and specifications. The laboratory which tested products under respondent's plan was Better Fabrics Testing Bureau, Inc., represented by respondent to be the official laboratory of the National Retail Dry Goods Association. It is not necessary to determine whether or not this laboratory was the official laboratory of such association, inasmuch as the record shows respondent was entitled to believe that it was. Most of the stock of Better Fabrics Testing Bureau, Inc., is owned by its president and the remainder by the National Retail Dry Goods Association. The record indicates that respondent has no ownership interest in or control over Better Fabrics Testing Bureau, Inc., and was no more than a very substantial client of that bureau. The evidence makes it clear that insofar as respondent is concerned Better Fabrics Testing Bureau, Inc., was an independent laboratory. The record further indicates that the tests made by this bureau for the respondent were in accordance with fixed and definite specifications, and that approval or disapproval was reported to the respondent in accordance with the results of the tests made.

Lastly, the complaint charges in substance that respondent furnished to converters, manufacturers, and others labels for use on fabrics composed in part of rayon and in part of other fibers, which tags or labels bore the statement "Crown Tested and Approved Rayon

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Fabrics," with the disclosure of fibers other than rayon being on the back of the labels and not seen by the purchaser. The tags and labels furnished by respondent to converters, manufacturers, and others under its "Quality Control Plan" were of a number of types, depending upon whether they were to be attached on garments, to a bolt of cloth, or to fabric in other forms of packaging. In some instances the disclosure of a fiber content other than rayon was on the same side of the tag or label that bore the description "Crown Tested and Approved Rayon Fabric"; in other instances the disclosure was upon the reverse side of the tag or label from that bearing the statement "Rayon Fabric"; and in all instances the disclosure was so placed as to be readily accessible to purchasers or prospective purchasers of the article so tagged or labeled.

CONCLUSION

The acts and practices of respondent heretofore found to be false, misleading, and deceptive are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and 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, answer of respondent, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel, 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 respondent, American Viscose Corp., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of rayon products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that products containing rayon fibers or yarn produced by respondent have been tested and approved under consumer standards or under standards established by any group, organization, or agency which did not in fact control the specifications or requirements of such standards.

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

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IN THE MATTER OF

JOHN E. HAYNES, TRADING AS ARKANSAS PEANUT
COMPANY

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

Docket 5503. Complaint, June 20, 1947—Decision, Nov. 1, 1948 .

Where a corporation engaged in processing, roasting and packing peanuts, and in interstate sale and distribution thereof, including certain assortments which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the consuming public, a typical assortment consisting of a carton of thirty 5-cent packages, described by it as "Chuck-O-Luck Peanuts," which displayed the legend "full value and you may find 5¢, 10¢, 25¢, 50¢, \$1.00," upon the cartons and packages, within a few of which were concealed one of the above named sums—
Sold such assortments to dealers by whom they were exposed and sold at retail to the public in accordance with the aforesaid sales plan, involving a game of chance or sale of chance to procure one of the aforesaid sums; and thereby
Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product, contrary to established public policy and the public interest;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell his said product:

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

Mr. John W. Brookfield, Jr., for the Commission.

Mr. William P. Smith, of Washington, D. C., 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 John E. Haynes, an individual trading as Arkansas Peanut Co., 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