

Complaint

IN THE MATTER OF

HAROLD EISENBERG AND SAM EISENBERG DOING
BUSINESS AS PLYMOUTH TEXTILES

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

Docket 5869. Complaint, Apr. 4, 1951—Decision, July 12, 1951

Where two partners engaged in conducting a mail-order business in the interstate sale of remnants and patches of cloth to the general public; in advertising in newspapers and periodicals and otherwise—

- (a) Misleadingly and erroneously represented that assortments of cloth included pieces of sufficient size to be made into aprons and children's sun suits, through such statements as "Ideal for aprons, children's sun suits, patchwork quilts," etc.; when in fact only one piece of cloth in the assortment was of such size and the remainder consisted of scraps, trimmings, and small irregular pieces; and
- (b) Represented that thread and a buttonhole maker were furnished to purchasers of the assortments without cost or obligation of any nature, through such statements as "FREE 100 yds. Thread VALUE FREE! With your First Order * * * Amazing New Button Hole Maker x x all this free to introduce our BIG PATCH and REMNANT assortment," etc.;

The facts being that the cost of such articles was included in the charge for the assortment and the only instances in which the articles were furnished without cost were those in which the other merchandise, namely, the remnants and patches, was returned by the purchaser;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their merchandise and the articles purportedly offered without cost, and thereby cause it to purchase their products:

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. William L. Pack*, trial examiner.

Mr. Morton Nesmith and *Mr. John C. Williams* for the Commission.

Mr. Sidney H. Asch, 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 Harold Eisenberg and Sam Eisenberg, copartners, doing business as Plymouth Textiles, 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:

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PARAGRAPH 1. Respondents, Harold Eisenberg and Sam Eisenberg, are copartners doing business as Plymouth Textiles, with their office and principal place of business located at 195 Plymouth Street, Brooklyn, N. Y. Said respondents are now and for several years last past have been engaged, among other things, in conducting a mail-order business in the sale of patches and remnants to the general public.

PAR. 2. In connection with said business respondents cause and have caused said products, when sold, to be shipped from their place of business in the city of Brooklyn, N. Y., into and through other States of the United States to purchasers located in said other States. Respondents maintain and have maintained a course of trade in said products, in commerce, among and between the various States of the United States. Their volume of trade in said products in such commerce is and has been substantial.

PAR. 3. In the course and conduct of the aforesaid business, and for the purpose of promoting the sale of their said products, in commerce, respondents make and have made certain statements, representations and claims concerning said products and the use to which the same may be put, by means of advertisements inserted in newspapers and periodicals and other advertising literature. Among and typical of said statements and representations are the following:

BIG PATCH and REMNANT Assortment

4 lbs. only \$1.98

Plus C. O. D. Postage

FREE	1,000 yds. Thread	Value
	Button Hole Maker	\$1.70

FREE! With Your First Order! 1,000 yds. White No. 50 thread, equals 14—5¢ spools (70¢ value). Amazing, new Button Hole Maker, fits any machine. Sells elsewhere for \$1.00. All this free to introduce our BIG PATCH and REMNANT Assortment of 18—22 yds. of new, color-fast, cotton print goods. Ideal for aprons, children's sun suits, patchwork quilts * * *

PAR. 4. By means of the aforesaid statements respondents represented that there were included in their said assortment pieces of cloth of sufficient size out of which aprons and children's sun suits could be made.

PAR. 5. The said representation was false, misleading and deceptive. In truth and in fact, only one piece of the assortment was of sufficient size out of which an apron or a child's sun suit could be made. The balance of said assortment consisted of scraps, trimmings, and small irregular pieces of material.

PAR. 6. Respondents further represent, through the use of the word "free" in connection with the thread and buttonhole maker, that such

articles were furnished to the purchasers of their assortments without cost or obligation of any nature. In truth and in fact, such articles were not furnished "free" or without cost or obligation as the cost thereof was included in the charge made for the assortment.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public to believe that such representations are true and into the purchase of substantial quantities of respondents' said products in reliance on such erroneous belief.

PAR. 8. The aforesaid acts and practices of the 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 12, 1951, the initial decision in the instant matter of Trial Examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 4, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the

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complaint, answer, and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Harold Eisenberg and Sam Eisenberg, are copartners doing business as Plymouth Textiles, with their office and principal place of business located at 195 Plymouth Street, Brooklyn, N. Y. Respondents are now and for several years last past have been engaged in conducting a mail-order business in the sale of remnants and patches of cloth to the general public.

PAR. 2. Respondents cause and have caused their merchandise, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States. Respondents maintain and have maintained a course of trade in their merchandise in commerce among and between the various States of the United States. Their volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business, respondents have advertised their merchandise by means of advertisements inserted in newspapers and periodicals, and by means of other advertising material. Among and typical of such advertisements is the following:

To Introduce 18-22 Yd. New Print

BIG PATCH & REMNANT

Assortment

4 lbs.

ONLY \$1.98

Plus C. O. D. postage.

FREE 1,000 yds. Thread VALUE

Button Hole Maker \$1.70

FREE! With your First Order 1,000 yds. White, No. 50 Thread, equals 14-5¢ spools (70¢ value). Amazing new Button Hole Maker, fits any machine, sells elsewhere for \$1.00. All this free to introduce our BIG PATCH and REMNANT assortment of 18-22 yards of new, color-fast, cotton print goods. Ideal for aprons, children's sun suits, patchwork quilts, doll dresses, pin cushions, pot holders, etc. A use for every patch. Complete with patterns, instructions. Yes, only \$1.98 plus postage and C. O. D. handling \$1.98 back if not satisfied, but you keep the FREE GIFTS, regardless! Order today!

PLYMOUTH TEXTILES

Dept. K1, 195 Plymouth Street, Brooklyn 1, N. Y.

PAR. 4. This advertisement was erroneous and misleading in that it represented, directly or by implication, that the assortment of merchandise referred to included pieces of cloth which were of sufficient size to be made into aprons and children's sun suits. Actually only one piece of cloth in the assortment was of that size. The remainder of the assortment consisted of scraps, trimmings and small, irregular pieces of material.

PAR. 5. Respondents' advertisement was erroneous and misleading for the further reason that it represented through the use of the word "free" in connection with the thread and buttonhole maker that such articles were furnished to the purchasers of such assortments without cost or obligation of any nature. Actually, such articles were not generally furnished free or without cost or obligation, as the cost thereof was included in the charge made for the assortment. The only instances in which the articles were furnished without cost were those in which the other merchandise (remnants and patches) was returned by the purchaser.

PAR. 6. The use by respondents of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' merchandise and with respect to the articles purportedly offered without cost, and the tendency and capacity to cause such portion of the public to purchase respondents' merchandise as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out 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.

ORDER

It is ordered, That the respondents, Harold Eisenberg and Sam Eisenberg, individually and as copartners trading under the name Plymouth Textiles, or trading under any other name, and their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of remnants and patches of cloth in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Representing, directly or by implication, that assortments of remnants and patches include pieces of cloth sufficiently large to be made into aprons or children's sun suits, unless such assortments do in fact consist in substantial part of pieces of cloth which are of sufficient size for such purposes.

2. Using the word "free" or any other word or words of similar import, to designate or describe articles the cost of which is included in the price of other merchandise, or which are not in fact gifts or gratuities furnished without cost or obligation to the recipient thereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after 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 the order to cease and desist [as required by said declaratory decision and order of July 12, 1951].

Syllabus

IN THE MATTER OF

AMASIA IMPORTING CORPORATION, SILK SKIN, INC. AND
GEORGE LACKS AND HAROLD G. LACKSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4459. Complaint, Aug. 9, 1948¹—Decision, July 13, 1951

Silk has been and is understood to be a product of the silk worm by the purchasing public which has held in high public esteem for a great many years, garments composed of silk, and there is a preference among purchasers particularly for feminine silk undergarments.

Lacking the force and effect of law, as trade practice rules do, their prime objective is to express the requirements of the statutes administered by the Commission and its decisions in terms particularly addressed to the problems and practices of industry members. In the instant proceeding, the practices alleged to be engaged in were charged as in violation of law, namely, the Federal Trade Commission Act; thus the proceeding was not based on transgression of the trade practice rules and no decision as to said matter was made or required under the issues presented by the pleadings.

In said connection as regards the expressions contained in rule 11 (a) of the Trade Practice Rules for the Silk Industry, promulgated by the Commission on November 4, 1938, which state that it is an unfair practice to use the word "silk" as a part of a trade or corporate name unless a substantial part of the business concerned is devoted to silk or silk products and there is full and nondeceptive disclosure in immediate conjunction with such name as to any merchandise which is not silk: Such expressions serve merely to define one particular area in which the Commission has reason to believe that use of the word "silk" as a part of the trade or corporate name is deceptive and in violation of the law, and obviously do not constitute a determination that in all other circumstances the use of such name is not in violation of law. Hence they present no bar to Commission action intended to remove a capacity and tendency to deceive, where found.

Where one of two corporations (directed and controlled by the same two officers), engaged in the manufacture of women's corsets, girdles, and foundation garments, and in the interstate sale and distribution thereof to department stores and retailers throughout the United States, and, after the war, in thus selling its said products through the second concern until about November 1947, when it ceased to manufacture; and one of the aforesaid individuals, its managing director—

- (a) Represented that their garments were composed of silk, the product of the cocoon of the silkworm, through using and featuring the product name "Silk Skin" to designate and refer thereto in their advertisements and in advertising mats furnished for the use of stores, on containers of their products, and through labels and tags attached thereto in which the statement of the constituent fibers was relatively inconspicuous; and

¹ Amended.