

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.

Where said second concern and the aforesaid individuals—

(b) Represented that their garments were composed of silk, as aforesaid, through use of the words "Silk Skin" in the expression "Full Fashioned and Seamless by Silk Skin, Inc." to designate the same on price lists in which, under the caption "Advertising Cooperation Policy," they offered to supply without charge mats and suggested advertising, and allow 50 percent of a store's net local space rate, providing that the advertisement prominently display the legend "FULL-FASHIONED and SEAMLESS by SILK SKIN, INC." (in which the terms "by" and "Inc." appeared in much smaller print and lighter type than the words "SILK SKIN"); through a mat and suggested advertising in which such names were similarly featured; and through featuring the corporate name "Silk Skin, Inc." in advertisements in publications, on letterheads, on containers of their merchandise, and on tags and labels including those on its nonsilk, rayon products, in which were stated the constituent fibers and in which the name's first two words were made relatively prominent;

The facts being that none of their garments was made exclusively of silk; an elastic yarn covered with lisle and knitted together with rayon or nylon, or with silk, was used in their manufacture; when silk was used, the silk content constituted about one-third of the garment's weight; and about 85 percent of their merchandise contained no silk whatsoever, and were constituted in major part of rayon;

With capacity and tendency to mislead and deceive a substantial portion of the consuming public with respect to the constituent fibers of their garments and thereby induce the purchase thereof; and with result of placing in the hands of dealers purchasing such products from them for resale a means to mislead and deceive the public with respect thereto:

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.

Contention of respondents that no deception stemmed from the use of the corporate name "Silk Skin, Inc.," in connection with the sale of their garments, since it was used only to identify the manufacturer of the article, and information with respect to the fiber content of the products appeared on the labels and tags affixed thereto was not tenable in view of their reference to their "Silk Skin Foundations" in pamphlets distributed by them to the trade; of the fact that their policy relating to cooperative advertising, as announced to dealers, contained no requirement that the use of the words "Silk Skin" be limited exclusively to identifying the corporate respondent as the source of the products offered; and the fact that their representative advertisements relating to their mat service for dealers and store use contained no suggestion that the great bulk of their line was constituted of garments which contained no silk, or contained any fiber other than silk.

The deception which stemmed from respondents' prior use of the product name "Silk Skin," and the manner of their current use of the word "silk" in the corporate name "Silk Skin, Inc." to designate garments which contained no silk was not cured by the information relating to fiber content in the advertising and on the garments, since, in view of the great esteem in which silk garments are held by the public, the purchaser might not be impelled

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to inspect the labeling to corroborate the impression necessarily engendered by the prominent display of the word "silk" in the product or corporate name; and in instances in which the garment contained no silk, the labeling would not serve to amplify or explain the impressions thus engendered, but might serve only as a confusing contradiction. The Commission, accordingly, was of the opinion that only a prohibition against the use of the word in any manner, including the corporate name as a designation for or in reference to those of respondents' garments which were not composed in part of silk, would eliminate adequately the deception which the word had the capacity and tendency to engender.

As to the contention of respondents that the advertising of respondents' "Silk Skin, Inc." complied with the Trade Practice Rules for the Silk Industry, promulgated by the Commission on November 4, 1938, rule 11 (a) set forth that it was an unfair trade practice to use the word "silk" as a part of a trade or corporate name unless a substantial part of the business in question was devoted to silk or silk products, and there was full and nondeceptive disclosure in immediate conjunction, with the name, of the fact as to any merchandise advertised and sold which was not composed wholly of silk; and rule 11 (b) condemned the use of the word "silk" in any trade-mark indicative of silk when the merchandise concerned was not in fact composed thereof. Such expressions afforded no support for a conclusion that under the statute misrepresentation inuring to the use of deceptive trade-marks might be perpetuated through the medium of a subsequently adopted firm or corporate name, and there was no dispute that respondents' purpose was to perpetuate and continue use of the word "silk," in connection with the sale of garments theretofore so designated, through adopting the corporate name "Silk Skin, Inc.," in order to preserve what was deemed to be a valuable asset, namely the product name "Silk Skin."

Before *Mr. Miles J. Furnas* and *Mr. Henry P. Alden*, trial examiners.

Mr. Joseph Callaway for the Commission.

Gainsburg, Gottlieb, Levitan & Cole, of New York City, for respondents.

AMENDED 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 the Amasia Importing Corp., a corporation, Silk Skin, Inc., a corporation and George Lacks and Harold G. Lacks, individually and as president and secretary, respectively, of both corporations, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Amasia Importing Corp. and Silk Skin, Inc., are both corporations organized, existing and doing business under and by virtue of the laws of the State of New York and both have their offices and places of business at 10 East Thirty-ninth Street in the city and State of New York.

PAR. 2. The individual respondent George Lacks is president of both Amasia Importing Corp. and Silk Skin, Inc., and respondent Harold G. Lacks is secretary of both corporations. These individual respondents also have their offices and principal places of business at 10 East Thirty-ninth Street, New York, N. Y., and formulate, direct, and control the acts, policies, and business affairs of both corporate respondents.

PAR. 3. For a number of years prior to and during the early part of World War II, respondent Amasia Importing Corp. was engaged in the manufacturing, sale, and distribution of corsets and foundation garments for women. In 1943, respondent Silk Skin, Inc., was organized and for a time acted as the selling agent for respondent Amasia Importing Corp. In November 1947, respondent Amasia Importing Corp. ceased to manufacture such garments which are now made, advertised, sold, and distributed by respondent Silk Skin, Inc.

Respondents sell and have sold their products to department stores and other retail dealers and have caused and now cause such products when sold to be transported from their place of business in the State of New York to the purchasers thereof located in various other States in the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia. The respondents' volume of business in said articles in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have since March 21, 1938, made and caused to be made representations regarding the materials of which said garments were made, in advertisements published in newspapers, magazines, and other publications for distribution to the purchasing public. Respondents Amasia Importing Corp. in such advertisements used the trade name "Silk Skin" to designate and describe all of its garments, irrespective of the materials from which the garments were made. Respondent Silk Skin, Inc., prominently displays its corporate name on letterheads, billheads, and other advertising matter. Among and typical of the representations made and used by respondent Silk Skin, Inc., since the end of World War II, with regard to said corsets and foundation garments is the following:

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At Last
Silk Skin, Inc.,
Bring You
Pre-War
Full-Fashioned
Quality.

We've waited five long years for this day—for the fine quality yarns that would allow us to offer you the world-famous Full-Fashioned Panty and Girdle by Silk Skin, Inc.

PAR. 5. Through the use of the trade name Silk Skin to designate their products, and through the prominent display of the corporate name Silk Skin, Inc., on letterheads, billheads, and other advertising matter, and through the representations set forth above and others similar thereto, respondents have represented directly and by implication that their garments were and are composed of silk, the product of the cocoon of the silkworm.

PAR. 6. The foregoing representations were and are deceptive and misleading. In truth and in fact none of respondents' garments have ever been made exclusively of silk and many of them contain no silk at all. In fact, approximately 85 percent of the business of respondents is and always has been in garments containing no silk.

PAR. 7. Over a period of many years the word silk has had and still has in the minds of the purchasing and consuming public generally a definite and specific meaning as being the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities.

PAR. 8. The use by the respondents of the foregoing misleading and deceptive representations, disseminated as aforesaid, with respect to their products has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such representations were and are true and to cause and does cause a substantial portion of the public to purchase respondents garments under such mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 4, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Amasia Importing Corp., charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation

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of the provisions of that act. After the filing by said respondent of its answer, testimony and other evidence were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence, together with a stipulation as to the facts entered into on January 26, 1943, between counsel supporting the complaint and counsel for respondent under which respondent Amasia Importing Corp. waived further intervening procedure and consented to issuance by the Commission of findings as to the facts and order disposing of the proceeding, were duly recorded and filed in the office of the Commission. This proceeding thereafter came on to be heard before the Commission upon the complaint, answer, and the testimony and other evidence, including the aforesaid stipulation as to the facts. After the issuance on September 16, 1946, by the Commission of its findings as to the facts and order to cease and desist, respondent Amasia Importing Corp. on November 25, 1946, filed petition requesting that the proceedings be reopened and that said order to cease and desist be modified or, in the alternative, that the respondent be relieved of the stipulation of facts received into the record on January 26, 1943. It appearing to the Commission, among other things, that there had been a misconception and misunderstanding by counsel for respondent and there being reason to believe that changes in the factual situation had occurred, said findings as to the facts and order to cease and desist as theretofore issued by the Commission were on December 3, 1947, vacated and set aside and the matter was reopened for such further proceedings as appeared appropriate with leave being granted to respondent Amasia Importing Corp. to withdraw or amend the stipulation of facts referred to above. After the filing by respondent Amasia Importing Corp. of its statement withdrawing said stipulation of facts, the Commission on August 9, 1948, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof. Following the filing of respondents' answers to the amended complaint, testimony and other evidence in support of and in opposition to the allegations of the amended complaint were introduced before a trial examiner of the Commission theretofore duly designated by it and such testimony and other evidence were recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing by the Commission upon the record including the amended complaint, respondents' answers, testimony, and other evidence, recommended decision of the trial examiner and the exceptions thereto filed by respondents, briefs in support of and in opposition to the amended complaint, and oral argument; 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Amasia Importing Corp. and Silk Skin, Inc., are New York corporations with their principal place of business at 10 East Thirty-ninth Street, New York, N. Y. Respondent Harold G. Lacks has been an officer and a managing director of respondent Amasia Importing Corporation since 1938, and an officer and a director of respondent Silk Skin, Inc., since its organization in 1943. Respondent George Lacks has been an officer and a managing director of both of the corporate respondents since 1944. Respondents Harold G. and George Lacks are the only officers of the respondent corporations and they have directed and controlled the acts and policies and business affairs of both respondent corporations.

PAR. 2. From prior to August 1938 until after the beginning of World War II, respondent Amasia Importing Corp. engaged in the manufacture and sale of women's corsets, girdles, and foundation garments to department stores and other retail dealers throughout the United States. Respondent Amasia Importing Corp. resumed the manufacture of these garments at the end of the war, but the merchandise produced thereafter was sold and distributed to retail stores by respondent Silk Skin, Inc. On or about November 1, 1947, Amasia Importing Corp. ceased to manufacture respondents' garments and since that date respondents' merchandise has been manufactured, sold, and distributed by respondent Silk Skin, Inc.

PAR. 3. In connection with the sale of their girdles, corsets, and foundation garments to dealers, respondents have caused their merchandise to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents, during the periods mentioned herein, have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia, the volume of which has been substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made and caused to be made representations concerning such merchandise in advertisements published in newspapers, magazines, and other publications for distribution to the purchasing public.

(a) In the advertising of respondent Amasia Importing Corp. disseminated prior to World War II, respondents' garments were desig-

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nated and described by the product name "Silk Skin," which name was displayed prominently and conspicuously in advertisements and on the garments when offered for sale to the purchasing public. Typical of such advertisements is one which appeared on August 24, 1938, in The New York Sun over the name of a store engaged in the resale of such garments. This advertisement was reproduced from an advertising mat furnished by respondent Amasia Importing Corp. to such store and read:

SILK SKIN

Trademark Reg. No. 323812

U. S. Pat. Off.

* * * *your new,*
free "n" easy girdle

Gives you wonderful feeling of
ease and comfort. Quick to
slip into, with its zipped
front panel. Keeps you sleeked,
without a wrinkle, into lovely
curves. 80% elastic yarn with
20% rayon. * * *

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Another typical advertisement used by respondent Amasia Importing Corp. appeared in The New York Times on October 23, 1938, wherein the display was in single column width and the words "Silk Skin" appeared variously in large script and prominent type, which advertisement read:

You'll be
SLIMMER
SMOOTHER
SMARTER

Full-fashioned, Free as Air

SILK SKIN

80% to 100% elastic yarn com-
bined with lisle, rayon or silk

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You'd have to pay two and three
times the price for expensive
French hand-fashioned girdles to
look as lusciously smooth and
slim as you do in a SILK SKIN.

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You can wear the new romantic fashions
with distinction, and yet be perfectly
comfortable, in a SILK SKIN pantie-
corset. The highly resilient, unique
elastic fabric (it actually improves
with washing) molds you naturally,
with not a seam to bulk or bind. * * *

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You look chic as a fashion model
in a SILK SKIN all-in-one because
the powerful elastic molds you
into today's smart fashion figure.

* * * *

SILK SKIN

girdles, panties and all-in-one,
with and without zipper panel, at
all leading stores, \$3.50 to \$15
Write for illustrated Brochure T-7
SILK SKIN—10 EAST 39, N. Y.

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(b) Among the advertisements used in promoting the sale of respondents' products by Silk Skin, Inc., has been a price list, effective October 1, 1947, in which, among other things, appears the following:

ADVERTISING COOPERATION POLICY

We will supply without charge matrix and suggested advertising copy to stores desiring same. We will allow 50% of a store's net local space rate for any newspaper advertisement to cover actual line-age used provided that the advertisement is separately enclosed and prominently displays the legend

FULL-FASHIONED and
SEAMLESS

by SILK SKIN, Inc.

* * * * *

In the foregoing, the terms "by" and "Inc." appear in much smaller print and in lighter type than the words "SILK SKIN." A matrix and suggested advertising referred to, as offered by respondents in 1947, are the following:

at last SILK SKIN Inc.		SILK SKIN Inc. presents
brings you		
PRE-WAR FULL FASHIONED QUALITY	P I C T U R E O F	the ONLY full fashioned seamless pantie in the world FREE AS AIR—real comfort, with not a single seam to bulk or bind. FULL FASHIONED— under a patented process comparable to expensive hand- woven French elastic—to shape you with real corset control. \$00.00
We've waited five long years for this day—for the fine quality yarns that would allow us to offer you the world- famous Full-Fashioned Pantie and Girdle by SILK SKIN, inc.		PICTURE OF MODEL
STORE NAME		STORE NAME

(c) To the merchandise sold by Amasia Importing Corp. there were attached two woven tab labels. These were affixed at the same place on the top seam of the garments in such manner that one was superimposed over the other. In large script on the outer face of the upper label were imprinted the words "Silk Skin" in flowing script, and on the reverse face appeared information relating to patents. The under or less conspicuous label had imprinted on its outer face the style number and size and on the under side appeared a statement in small but discernible type relating to the constituent fibers of such garment. To these garments respondents also affixed a cardboard tag on which the term "Silk Skin" appeared in very large letters, and on the back, in small but relatively discernible type, there was imprinted, among other things, laundering instructions together with a statement in reference to constituent fibers.

To its garments containing rayon but no silk, respondent Silk Skin, Inc. causes to be attached cardboard tags on which there is imprinted, among other things, the words "By Silk Skin, Inc. Cotton Lastex * * * Rayon Yarn." On such tag the term "Inc." appears in extremely small type. A single woven tab label also is affixed which reads "Cotton Lastex and Bemberg Rayon * * * By Silk Skin Inc." The letters in the words "Silk Skin" appear in script. The word "By" and the expression "Inc." appear in somewhat smaller type.

PAR. 5. Through the use of the product name "Silk Skin" to designate, describe and refer to all of their garments in advertisements appearing in various publications and in other advertising matter, including the boxes in which their merchandise was packaged and the labels and tags attached to such garments, respondents Amasia Importing Corporation and Harold G. Lacks represented directly and by implication that the garments so designated were composed of silk, the product of the cocoon of the silk worm. Through use of the words "Silk Skin" in the expression "Full Fashioned and Seamless by Silk Skin, Inc." to designate their merchandise, and through prominent display of the corporate name "Silk Skin, Inc." in advertisements appearing in publications, on letterheads and in other advertising matter, including the boxes in which their merchandise is packed and on labels and tags attached to such garments, respondents Silk Skin, Inc., George Lacks and Harold G. Lacks have represented and now represent directly and by implication that all of the garments so designated and offered for sale and sold by them are composed of silk, the product of the cocoon of the silk worm.

PAR. 6. The representations of respondents referred to in Paragraph Five above are false and misleading. None of respondents'

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garments ever has been made exclusively of silk. An elastic yarn, the covering of which is composed of lisle, is used in the manufacture of respondents' girdles, corsets and foundation garments. The yarn is knitted together with rayon or nylon, or with silk. When silk is used as plating or facing in the knitting of respondents' garments, the silk content of the article so produced constitutes approximately 33 $\frac{1}{3}$ percent of garment weight. Approximately 85 percent of the merchandise sold by respondents contains no silk whatsoever, and garments containing rayon which resembles silk in appearance constitute the major part of this category of merchandise in which no silk fiber is present.

PAR. 7. Silk has been and is understood by the purchasing public to be the product of the cocoon of the silk worm and garments composed of silk have been held in high public esteem for a great many years. There is a preference among purchasers particularly for feminine silk undergarments.

PAR. 8. In the course of these proceedings, respondents have urged that no deception stems from the use of the corporate name "Silk Skin, Inc." in connection with the sale of their garments for the reason that the name is used only to identify the manufacturer of the articles being offered for sale and for the further reason that information respecting fiber content of the products appears on labels and tags affixed thereto. Respondents' contention that the advertising of respondent Silk Skin, Inc., has been limited to identifying the corporate respondent as the maker of the product offered for sale is not tenable. Statements in reference to respondents' "Silk Skin foundations" have appeared in pamphlets distributed by respondents to the trade. Pertinent and considered in this connection also is the fact that respondents' policy relating to cooperative advertising with dealers, as announced by respondent Silk Skin, Inc., to the trade, has contained no express requirement that use of the words "Silk Skin" be limited exclusively to identifying the corporate respondent as the source of the products offered for sale. One of the representative advertisements depicted in respondents' promotional matter relating to the mat service available in 1947 to dealers contains no suggestion that the great bulk of respondents' line of merchandise constitutes garments containing no silk or that respondents' garments contain any fiber other than silk. The mats referred to were adaptable to store use merely through insertion of the name of the store in which they are being offered for sale.

In the opinion of the Commission, the deception stemming from respondents' prior use of the product name "Silk Skin" and the manner

of their current use of the word "Silk" in the corporate name "Silk Skin, Inc." to designate garments containing no silk is not cured by the information relating to fiber content appearing in the advertising and on such garments. Silk has been used widely in the manufacture of women's corsets, girdles, and foundation garments. Silk garments are held in great esteem by the purchasing public and where, as in the circumstances here, the product name or corporate name suggests that the garments are composed of this fiber the purchaser may not be impelled to inspect the labeling of the garment to corroborate thereby the impressions necessarily engendered by prominent display of the word "Silk" in a product or corporate name. In instances in which the garments offered for sale contain no silk fiber, the labeling would not serve to amplify or explain the impressions engendered by the presence of the word "Silk" in such product name or business name, but may serve only as a confusing contradiction thereto. In considering the remedy to be applied here, the Commission is of the opinion, therefore, that only a prohibition against use of the word "silk" in any manner including the corporate name as a designation for, or in reference to, those of respondents' garments which are not comprised in part of silk, adequately will eliminate the deception which this word has the capacity and tendency to engender.

PAR. 9. It is urged by respondents that the advertising of respondent Silk Skin, Inc., complies with the Trade Practices Rules for the Silk Industry promulgated by the Commission on November 4, 1938. Rule 11 (a) of such rules contains an expression to the effect that it is an unfair trade practice to use the word "silk" as part of the trade or corporate name unless a substantial part of the business conducted by such user is devoted to silk or silk products, and that as to any merchandise of the business which is not composed wholly of silk, full and nondeceptive disclosure is made in immediate conjunction with such trade or corporate name of the fact that the merchandise advertised and sold is not silk but is composed of or contains other fibers. Rule 11 (b) states that it is an unfair trade practice to use the word "silk" in any trade-mark indicative of silk when the merchandise which bears such mark, or which is advertised and sold thereunder, is not in fact composed of silk, or to use said trade-mark, in any other manner, or under any other condition, which is misleading or deceptive.

It is not correct, as respondents contend, that the advertising of respondent Silk Skin, Inc., has complied with the Trade Practice Rules. This conclusion, in part, is based on the Commission's consideration of the advertising matter used by Silk Skin, Inc., offering

to dealers its mat service which contained the suggested advertising described hereinbefore in paragraph 4 (b).

In 1943, prior to the issuance of the amended complaint in this proceeding but during the time when this proceeding was pending, respondent Silk Skin, Inc., was organized by the same interests who theretofore had conducted the affairs of Amasia Importing Corp. It is asserted by respondents that the corporate name under consideration here was adopted in order to preserve what was deemed to be a valuable asset, namely, the product name "Silk Skin" and there is no dispute, therefore, that respondents' purpose was to perpetuate and continue use of the word "silk" in connection with the sale of garments theretofore so designated. The expressions contained in Rule 11 (a) afford no support for a conclusion that under the statute misrepresentation inhering in the use of deceptive trade-marks, referred to in Rule 11 (b), may be perpetuated through the medium of the subsequently adopted firm or corporate name.

Lacking as they do the force and effect of law, the prime objective of trade practice rules is to express the requirements of the statutes administered by the Commission and decisions in terms particularly addressed to the problems and practices of industry members. The amended complaint in this proceeding, therefore, charges that the practices alleged to have been engaged in are in violation of law, namely, the Federal Trade Commission Act, and the proceeding is not based on transgression of the Trade Practice Rules. Therefore, whether such part of respondents' business as relates to the offering for sale of garments actually containing silk constitutes a substantial part of the business of Silk Skin, Inc., is not being decided by the Commission and a decision in this respect is not necessary to determination of the issues presented under the pleadings.

The expressions contained in Rule 11 (a), moreover, serve merely to define one particular area in which the Commission has reason to believe that use of the word "silk" as part of a trade or corporate name is deceptive and in violation of the law. Obviously, these statements do not constitute a determination that in all other circumstances the use of such name is not in violation of the law, and where, as here, the use of the name is found to have the capacity and tendency to deceive, Rule 11 (a) presents no bar to Commission action intended to remove such capacity and tendency.

PAR. 10. The use by the respondents of the foregoing representations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the consuming public with respect

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to the constituent fibers of respondents' garments, and to cause a substantial portion of the public to purchase respondents' garments as a result of the erroneous and mistaken belief so engendered. Respondents' acts and practices have served and now serve also to place in the hands of dealers purchasing such merchandise from respondents for resale a means and instrumentality whereby they are enabled to mislead and deceive the public with respect to respondents' garments.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the record including the amended complaint, the answers of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and the exceptions thereto, briefs filed in support of and in opposition to the amended complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Amasia Importing Corp., a corporation, and respondent Silk Skin, Inc., a corporation, and said respondents' officers, agents, representatives, and employees, and respondents George Lacks and Harold G. Lacks, individually and as officers of Amasia Importing Corp. and Silk Skin, Inc., and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as commerce is defined in the Federal Trade Commission Act, of wearing apparel not composed of silk, do forthwith cease and desist from:

Using the product name "Silk Skin" or the corporate name "Silk Skin, Inc.," or the word "silk" or any simulation thereof, either alone or with other words or as part of any product or corporate name; *provided, however*, That nothing herein shall be construed to prohibit use of such product name or corporate name or other word or words indicative of silk content in connection with the offering for sale, sale, or distribution, as aforesaid, of garments composed in substantial part

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of silk and in part of another fiber or fibers if, whenever such terms or words appear, there are used in immediate conjunction therewith, in letters of equal conspicuousness, words truthfully describing such other fiber or fibers.

It is further ordered, That the respondents shall, within sixty (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 this order.

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IN THE MATTER OF

ATLAS SUPPLY CO., STANDARD OIL CO. (OHIO), STANDARD OIL CO. (KENTUCKY), STANDARD OIL CO. OF CALIFORNIA, AND STANDARD OIL COS. (OF INDIANA AND NEW JERSEY), ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (C) AND (F) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT APPROVED SEPT. 26, 1914

Docket 5794. Complaint, July 10, 1950—Decision, July 19, 1951

Where a corporation through which, as their controlled intermediary, the Standard Oil companies of Ohio, Kentucky, California, Indiana, and New Jersey had engaged increasingly since 1930 in purchasing "TBA" products, namely, tires, batteries, and other automobile products and accessories; and in selling the same through a substantial percentage of all the service stations located throughout the United States—

- (a) Received and accepted commissions, brokerages, or other compensation in lieu thereof on purchases of "TBA" products made through it by said oil companies in transactions in which the supply company acted as an intermediary subject to the control of the oil companies; and

Where said oil companies—

- (b) Received and accepted in the form of dividends on their common stock in said supply company and in the form of services and facilities furnished by it in the marketing of their "TBA" products, and in various other ways, compensation which said supply company thus received and transmitted to them:

Held, That such acts and practices of said corporations in receiving and accepting commissions, brokerages, and other compensation or allowance, or discount in lieu thereof, as above set forth, violated the provisions of subsec. (c) of sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said supply company, in connection with the purchase of "TBA" products from sellers or vendors who were in competition with other sellers for its business—

- (a) Knowingly induced and knowingly received and accepted discriminatory prices from some of such sellers or vendors which were lower than prices paid to the same "TBA" sellers for commodities of like grade and quality by other purchasers competing with the oil companies in their resale; and

Where said oil companies, in the purchase of certain of their requirements of such products through and from the supply company, in the resale of which they were in competition with distributors, wholesalers, jobbers, and others—

- (b) Knowingly received and accepted discriminatory prices from some of such sellers or vendors which were lower than those paid to the same "TBA" sellers as aforesaid;

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Effect of which discriminations in price and of the practices and activities above set forth in connection with said various companies' purchases of "TBA" products, might be and was substantially to lessen competition in the lines of commerce in which they were engaged, and to injure, destroy, or prevent competition between their suppliers who granted them lower prices and those suppliers who did not grant such discriminatory prices, and also to injure, destroy, and prevent competition between said companies and other marketers, including distributors, wholesalers, jobbers, and others, who did not receive said discriminatory prices:

Held, That such acts and practices of said various companies in knowingly inducing and receiving and knowingly accepting the discriminations in price as above set forth were in violation of the provisions of subsec. (f) of sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act; and Where the aforesaid oil companies, which since 1930 either directly or through their wholly owned subsidiaries owned all the common stock of said supply company, and operated the same in connection with their aforesaid purchases of "TBA" products (sales of which by them grew from 1930 to 1949 to about 10 percent of the total replacement sales of such products in the United States)—

Agreed and combined among themselves, through their uninterrupted ownership, control, and operation of said "Supply Company" since 1930 and its use as an intermediary in the purchase of "TBA" products, to utilize the influence of their combined purchasing power in jointly buying said products, and thereby to purchase the same at illegally discriminatory prices; to receive illegal commissions, brokerages, or other compensation in connection with purchases of said products; and to obtain other preferential treatment from sellers or vendors which was preferential to that allowed, afforded, or made available by such sellers to competitors of said various companies;

Effects of which practices and activities, under the circumstances set forth, were to—

1. Injure, lessen, and prevent competition between them and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the purchase and resale thereof;
2. Eliminate competition between respondent "Oil Companies" in the purchase of "TBA" products through respondent "Supply Company";
3. Foreclose a large market to those manufacturers and vendors of the aforesaid products who refused to grant illegal discriminatory prices or to pay illegal commissions, brokerage, or other compensation to respondents; and
4. Increase substantially the size, power, and market control of respondents in the purchase and resale of "TBA" products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a dangerous tendency to hinder, lessen, and restrain competition in the purchase and resale of "TBA" products in commerce; and to create in respondents a monopoly in the purchase, sale, and distribution thereof; and constituted unfair methods of competition in commerce.

Before *Mr. Everett F. Haycraft*, trial examiner.

Mr. Earl W. Kintner, *Mr. J. Wallace Adair*, *Mr. L. E. Creel, Jr.*, and *Mr. James I. Rooney* for the Commission.

Mr. William W. Nottingham, of New York City, and *Covington & Burling*, of Washington, D. C., for Atlas Supply Co., and along with—
McAfee, Grossman, Taplin, Hanning, Newcomer & Hazlett, of Cleveland, Ohio, for Standard Oil Co. (Ohio);

Middleton, Seelbach, Wolford, Willis & Cochran, of Louisville, Ky., for Standard Oil Co. (Kentucky);

Pillsbury, Madison & Sutro, of San Francisco, Calif., for Standard Oil Co. of California;

Kirkland, Fleming, Green, Martin & Ellis and *Mr. Thomas E. Sunderland* and *Mr. Albert L. Green*, of Chicago, Ill., for Standard Oil Co. (Indiana); and

Davis, Polk, Wardwell, Sunderland & Kiendl, of New York City, for Standard Oil Co. (New Jersey).

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, as amended by the Robinson-Patman Act, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of subsections (c) and (f) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., title 15, sec. 13), and section 5 of the Federal Trade Commission Act (U. S. C., title 15, sec. 45), 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 as follows:

COUNT I

Charging violation of section 2 (c) of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Each of the following-named respondents is a corporation, organized, existing, and doing business under the laws of the State and with its principal office and place of business located as hereinafter set forth:

Name	State of incorporation	Principal office and place of business
Atlas Supply Co.	Delaware	744 Broad St., Newark, N. J.
Standard Oil Co. (Ohio)	Ohio	Midland Bank Bldg., Cleveland, Ohio.
Standard Oil Co. (Kentucky)	Kentucky	Starks Bldg., 4th and Walnut Sts., Louisville, Ky.
Standard Oil Co. of California	Delaware	Standard Oil Bldg., San Francisco, Calif.
Standard Oil Co. (Indiana)	Indiana	910 South Michigan Ave., Chicago, Ill.
Standard Oil Co. (New Jersey)	New Jersey	30 Rockefeller Plaza, New York 20, N. Y.

Respondent, Atlas Supply Co., is hereinafter referred to as the "Supply Company." The other above-named respondents, when referred to collectively hereinafter, will be referred to as the "Standard Oil companies."

PAR. 2. The "Standard Oil companies," either directly or through their wholly owned subsidiaries, are now, and for many years have been, engaged in the business of producing, refining, and selling petroleum products. Beginning in 1929, and with increasing emphasis since that date, they have engaged in the business of purchasing and selling tires, batteries, and other automobile parts and accessories, which products are generally referred to in the trade as "TBA" products and will sometimes hereinafter be referred to as "TBA" products. The sale of "TBA" products now constitutes a large and profitable portion of their business.

The "Standard Oil companies," respectively, sell their petroleum products and resell "TBA" products to or through service stations operated by them or by persons, firms, and corporations whose buying, selling, and operating policies the "Standard Oil companies" are able to greatly influence or control. These said service stations constitute a substantial percentage of the total number of service stations in the United States. The influence or control of the "Standard Oil companies" over these service stations was acquired through ownership, leases, or subleases of the service stations, leasing of pumps and fixtures, dealer contracts, agreements, promotional and marketing assistance, and many other factors.

PAR. 3. The "Standard Oil companies" purchase "TBA" products through the "Supply Company" and have been doing so continuously since its organization and incorporation which was effected, directly or indirectly, by the "Standard Oil companies" on February 27, 1929. All of the common stock in the "Supply Company" is now, and since the time of its organization has been, owned in equal amounts of 100,000 shares each by the "Standard Oil companies" either directly or through their wholly owned subsidiaries. The holders of the common stock have the sole voting power. Part of the net profits or net earnings of the "Supply Company" have been paid to the "Standard Oil companies" as dividends on its common stock. Such dividends have not been paid on the number of shares of common stock owned by each of the "Standard Oil companies," but the net profits or earnings on each class of products handled have been divided among the "Standard Oil companies," respectively, in proportion to their purchases of "TBA" products of that class.

The "Supply Company" in each of the transactions hereinafter referred to acted as the agent, representative, or intermediary acting in fact for, or in behalf of, and subject to the control of, the "Standard Oil companies."

PAR. 4. In the course and conduct of said business since 1929, said purchases of "TBA" products have been made continuously from vendors located in the several States of the United States; and respondents have caused said products so purchased to be transported from said States to destinations in other States and the District of Columbia in a regular current and flow of commerce.

PAR. 5. In the course of said business in commerce since June 19, 1936, the "Standard Oil companies" have purchased certain of their requirements of "TBA" products through the "Supply Company" from "TBA" vendors, some of whom paid the "Supply Company" commissions, brokerage fees, or other compensations on said purchases.

The "Supply Company" received and accepted said compensations and transmitted and paid them to, and they were received and accepted by the "Standard Oil companies" in the form of dividends on the common stock of the "Supply Company," and in the form of services and facilities furnished them by the "Supply Company" in the marketing of their "TBA" products and in various other ways.

In all of the aforesaid transactions where the "Supply Company" received commissions, brokerage fees, or other compensations, it acted as agent, representative, or other intermediary therein acting in fact for or in behalf, or subject to the direct or indirect control of the "Standard Oil companies," and in some of said transactions it also purported to act as agent of the vendor.

Among the transactions in which the "Supply Company" received and accepted said valuable considerations were those made under agreements entered into by the "Supply Company" with Westinghouse Electric Corp. and General Electric Co. In said transactions the "Supply Company" agreed to act as sales agent for each of these two companies in the sale and distribution of electric lamps and related items, and the said two companies agreed to pay and paid the "Supply Company" a commission on purchases thereof made through it by the "Standard Oil companies."

PAR. 6. The foregoing acts and practices of the respondents, and each of them, in receiving and accepting commissions, brokerages, or other compensation or allowances or discounts in lieu thereof, in the manner and form aforesaid, are in violation of the provision of subsection (c) of section 2 of the Clayton Act, as amended.

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COUNT II

Charging violation of section 2 (f) of the Clayton Act, as amended, the Commission alleges:

PAR. 7. Paragraphs 1 to 4, inclusive, of count I are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth in full.

PAR. 8. In the course of said business in commerce since June 19, 1936, the "Standard Oil companies" have purchased certain of their requirements of "TBA" products through the "Supply Company" from "TBA" vendors, in the resale of which the Standard Oil companies were in competition with distributors, wholesalers, jobbers, and others, except to the extent that this competition has been lessened or eliminated by the methods, practices, and policies of respondents described herein. In certain of these purchases the respondents have knowingly induced or knowingly received discriminatory prices from certain "TBA" vendors which were lower than prices paid to the same "TBA" vendors for commodities of like grade and quality by other purchasers competing with the "Standard Oil companies" in their resale.

In each of the purchases referred to in this paragraph made by the "Standard Oil companies," a sale was made by a "TBA" vendor which transferred title to the products to the "Supply Company" and said products, in turn, were resold and title to them was transferred by the "Supply Company" to one of the "Standard Oil companies." At all times the "Supply Company" has been wholly owned and controlled by the "Standard Oil companies," and in each of these transactions the "Supply Company" was an intermediary acting for, or in behalf of, and subject to, the control of the "Standard Oil companies."

Among the transactions in which respondents have knowingly induced or knowingly received discriminatory prices from their vendors are: (1) Purchases of tires and tubes from the United States Rubber Company at cost plus 6 percent, while at the same time other competing distributors who purchased tires and tubes from United States Rubber Company, directly or through its wholly owned subsidiary were required to and did pay higher prices for tires and tubes of like grade and quality; (2) purchases of batteries from Auto-Lite Battery Corp. at discriminatory prices which were approximately 25 percent lower than the prices paid by competing distributors to Auto-Lite Battery Corp. for batteries of like grade and quality; and (3) purchases of fan belts and radiator hose from Raybestos-Manhattan, Inc., at discriminatory prices which were approximately 28 percent lower

than the prices paid by competing distributors to Raybestos-Manhattan, Inc., for products of like grade and quality.

PAR. 9. The effect of said discriminations in price, knowingly induced or received by respondents, as above alleged, may be substantially to lessen competition with or tend to create a monopoly in the "Standard Oil companies," in the line of commerce in which the "Standard Oil companies" are engaged, or to injure, destroy or prevent competition with the "Standard Oil companies" or with their customers.

PAR. 10. The foregoing acts and practices of the respondents, and each of them, in knowingly inducing or in knowingly receiving the aforesaid discriminations in price are in violation of the provisions of subsection (f) of section 2 of the Clayton Act, as amended.

COUNT III

Charging violation of section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 11. Paragraph 1 to 10, inclusive, of counts I and II are hereby repeated and made a part of this charge as fully and with the same effect as though here again set forth in full.

PAR. 12. Respondent, the Standard Oil Co. (New Jersey), prior to December 1, 1911, owned substantially all of the capital stock of respondent Standard Oil Co. (Kentucky), respondent Standard Oil Co. (Indiana), respondent Standard Oil Co. (Ohio), and Standard Oil Co. (California). All of the assets and liabilities of the Standard Oil Co. (California) were later acquired by respondent Standard Oil Co. of California (incorporated in Delaware on January 27, 1926).

Respondent Standard Oil Co. (New Jersey) and its subsidiaries were held by the Circuit Court of the United States for the Eastern District of Missouri to have illegally monopolized the production and sale of petroleum products. Acting under the court's decree of December 1, 1911, respondent Standard Oil Co. (New Jersey) distributed to its stockholders all of its stock in all of the other above-named Standard Oil companies and thereby withdrew from the direct control and direction of these companies.

PAR. 13. Beginning in 1929 and continuing to the present date, all of these respondents combined to monopolize trade in the purchase, sale, and distribution of "TBA" products in interstate commerce. The respondents, as parties to this unlawful combination, have agreed and conspired among themselves to purchase the said commodities at illegally discriminatory prices and to receive illegal commissions, brokerage, or other compensation in connection with purchases of the

said commodities. The effects of this combination and conspiracy are to hinder, lessen, frustrate, suppress, restrain, and eliminate competition and tend to create a monopoly in the sale and distribution of these commodities in interstate commerce.

PAR. 14. On February 27, 1929, the "Standard Oil companies," acting in concert, either directly or indirectly, organized the "Supply Company." This company has, at all times, been managed, controlled, and operated by the "Standard Oil companies" to serve as a medium or instrumentality by, through, or in conjunction with which said "Standard Oil Companies" exert the influence of their combined purchasing power on their vendors of "TBA" products.

Prior to 1929 the percentage of total sales of tires, batteries, and other automobile parts and accessories sold in the United States for replacement by the "Standard Oil companies" was negligible. In the 20 years from 1929 to 1949, their percentage of total sales has grown to where it now constitutes a substantial portion of the total replacement sales of these commodities made in the United States.

Among these commodities in which respondents' percentage of the total replacement sales in the United States has tremendously increased are tires, tubes, batteries, fan belts, radiator hose, electric lamps, and spark plugs. The "Standard Oil companies" purchasing collectively through the "Supply Company" are at the present time the largest or one of the largest buying units purchasing these commodities for resale in the United States. Their sales for each of these items purchased through the "Supply Company" has increased from a negligible amount prior to 1929 to from about 5 percent to 10 percent or more of the total replacement sales made in the United States.

PAR. 15. Among the acts, methods, practices, and policies engaged in by respondents pursuant to and in furtherance of their combination and conspiracy which have resulted in this tendency toward monopoly and restraint of trade and commerce, hereinabove described, respondents have:

- (1) Directed the attention of their vendors to the purchasing power possessed by them acting in concert and, by reason of such, have demanded and have received discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale from their vendors on their individual purchases which were not offered or granted by said vendors on purchases by others of commodities of like grade and quality;

- (2) Replaced those vendors which would not accede to such demands with vendors which did grant the said discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale;

(3) Entered into contracts with their vendors whereby said vendors agreed not to sell to respondents' competitors at prices lower than those charged respondents.

(4) Applied part of the savings secured by the aforesaid illegal purchasing methods to finance a very large and effective merchandising and sales promotional organization;

(5) Passed on to the "Standard Oil companies," in the form of dividends on the common stock of the "Supply Company," rebates on their purchases of the said commodities through the "Supply Company";

(6) Agreed between, and among themselves not to compete in the resale of commodities purchased through the "Supply Company," and the "Standard Oil companies," with few exceptions, carried out a planned common course of action whereby each sold commodities purchased through the "Supply Company" in mutually exclusive areas, although one or more of the "Standard Oil companies," or their subsidiaries, do compete in the sale of like commodities purchased otherwise than through the "Supply Company" in many of the States of the United States.

PAR. 16. The effects of the adoption and use by respondents of the practices and activities hereinabove alleged are that they have:

(1) Tended to create a monopolistic power in the purchase and resale of "TBA" products;

(2) Injured, lessened, prevented, and destroyed competition between respondents and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the resale of the aforesaid commodities;

(3) Eliminated competition between themselves in the resale of aforesaid commodities purchased through the "Supply Company";

(4) Foreclosed a large market to those manufacturers and vendors of the aforesaid commodities who refuse to grant illegally discriminatory prices or to pay illegal commissions, brokerage, or other compensation to the respondents;

(5) Increased substantially the size, power, and market control of respondents.

PAR. 17. The acts, practices, methods, agreements, combination, and conspiracy of the respondents, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of "TBA" products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have

restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of said products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Commissioner Ayres not participating.

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 19, 1951, the initial decision in the instant matter of trial examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act (U. S. C. title 15, sec. 45) and the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), and by virtue of the authority vested in it by said acts, the Federal Trade Commission on the 10th day of July 1950, issued and subsequently served its complaint in this proceeding upon respondents Atlas Supply Co., Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, their officers and directors, charging them with violation of subsections (c) and (f) of section 2 of the said Clayton Act as amended, and section 5 of the said Federal Trade Commission Act. After the filing of answers to the complaint in November 1950, negotiations were conducted between counsel in support of the complaint and counsel for respondents for a stipulation of the facts, or other disposition of the case, without formal hearings. On April 25, 1951, counsel for respondents and counsel in support of the complaint filed with the trial examiner joint motions for initial decision on the pleadings which would allow counsel for respondents to be permitted to file substitute answers in lieu of the original answers, which, solely for the purpose of disposing of the proceeding, admitted the allegations of fact set forth in the complaint which they deemed necessary for the disposition of all the issues in the case; waived hearings and consented that the trial examiner and the Commission may, without trial, without the taking of evidence, and without other intervening procedure, make and enter

findings as to the facts from the pleadings herein, including inferences which may be drawn therefrom and conclusions based thereon and issue and serve upon respondents the order set forth as appendices to the substitute answers, it being understood that in the event the trial examiner denies said motions, this proceeding will revert to its former status. Counsel in support of the complaint and counsel for respondents also filed, in connection with said motions, supplemental memoranda explanatory thereof. On May 15, 1951, the trial examiner entered an order granting the said motions for initial decision on the pleadings, the filing of substitute answers and closing the record before the trial examiner. Thereafter the proceeding regularly came on for final consideration by said trial examiner on the complaint, the substitute answers thereto, all intervening procedure having been waived, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Each of the following named respondents is a corporation, organized, existing and doing business under the laws of the State and with principal office and place of business or principal business office as hereinafter set forth:

Name	State of incorporation	Principal office and place of business or principal business office
Atlas Supply Co.	Delaware.....	744 Broad St., Newark, N. J.
The Standard Oil Co., an Ohio corporation.	Ohio.....	Midland Bldg., Cleveland, Ohio.
Standard Oil Co. (Kentucky).....	Kentucky.....	Starks Bldg., 4th and Walnut Sts., Louisville, Ky.
Standard Oil Co. of California.....	Delaware.....	Standard Oil Bldg., San Francisco, Calif.
Standard Oil Co., an Indiana corporation.	Indiana.....	910 South Michigan Ave., Chicago, Ill.
Standard Oil Co. (New Jersey).....	New Jersey....	30 Rockefeller Plaza, New York 20, N. Y.

Respondent Atlas Supply Co. is sometimes hereinafter referred to as the "Supply Company" and the other above-named respondents, when referred to collectively hereinafter, will sometimes be referred to as the "Oil Companies."

PAR. 2. The "Oil companies," either directly or through their wholly owned subsidiaries, are now, and for many years have been, engaged in the business of selling petroleum products. Beginning in 1930, and with increasing emphasis since that date, said "Oil companies" have engaged in the business of purchasing and selling tires, batteries, and other automobile parts and accessories, which products are generally referred to in the trade, and will sometimes

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hereinafter be referred to, as "TBA" products, and the respective "Oil companies" have sold said petroleum and "TBA" products to or through a substantial percentage of the total number of service stations located throughout the United States.

PAR. 3. The "Oil companies" purchase "TBA" products through and from the "Supply Company" and have been doing so continuously since 1930. All of the common stock of the "Supply Company" is now and since 1930 has been owned in equal amounts by the "Oil companies" either directly or through their wholly owned subsidiaries. As holders of this common stock, the aforesaid "Oil companies" have the sole voting power and control of the "Supply Company." In the exercise of this power the "Oil companies" have paid out part of the net profits or earnings of the "Supply Company" to themselves as dividends on this common stock. With certain exceptions, these dividends have not been based on the number of shares of common stock owned by each of the "Oil companies" but have been based upon the net profits or earnings of the "Supply Company" on each class of products handled and have been divided among the "Oil companies" respectively in proportion to their purchases of "TBA" products of that class from the "Supply Company."

The "Supply Company" in the purchase of "TBA" products now acts and has acted since 1930 as an intermediary subject to the control of the "Oil companies," this control being in part exercised through the exercise of said voting power.

PAR. 4. In the course and conduct of its business since 1930 the "Supply Company" has made purchases of "TBA" products from sellers or vendors located in the several States of the United States and has caused said products so purchased to be transported from said States to destinations in other States and the District of Columbia in a regular current and flow of commerce, and certain of the purchases of "TBA" products made by each of the "Oil companies" have been made through and from the "Supply Company" in such interstate commerce.

PAR. 5. In the course of said business and commerce since June 19, 1936, the "Oil companies" have purchased "TBA" products through the "Supply Company" from "TBA" sellers or vendors, some of whom paid the "Supply Company" commissions, brokerages, or other compensation in lieu thereof on said purchases. In all of these purchase transactions the "Supply Company" acted as an intermediary subject to the control of the "Oil companies."

The "Supply Company" since June 19, 1936, received and accepted said compensations and transmitted and paid them to, and they were received and accepted by, the "Oil companies" in the form of divi-

dends on the common stock of the "Supply company" and in the form of services and facilities furnished them by the "Supply Company" in the marketing of their "TBA" products and in various other ways.

PAR. 6. In the course of said business and commerce since June 19, 1936, the "Oil companies" have purchased certain of their requirements of "TBA" products through and from the "Supply Company" in the resale of which the respondents were in competition with distributors, wholesalers, jobbers and others. The "Supply Company" has purchased "TBA" products from sellers or vendors competing with other sellers for its business and in certain of these purchases the "Supply Company" has knowingly induced and knowingly received and accepted, and in certain purchases through and from the "Supply Company" the "Oil companies" have knowingly received and accepted discriminatory prices from some "TBA" sellers or vendors which were lower than prices paid to the same "TBA" sellers for commodities of like grade and quality by other purchasers competing with the "Oil companies" in their resale.

PAR. 7. The effect of the discriminations in price knowingly induced, received or accepted by the respondents and of the practices and activities hereinbefore found in connection with their purchases of "TBA" products, may be and is substantially to lessen competition in the lines of commerce in which the respondents are engaged and to injure, destroy, or prevent competition between respondents' suppliers of the aforesaid products who grant respondents lower prices on the one hand and those suppliers who do not grant such discriminatory prices on the other, and also to injure, destroy, or prevent competition between respondents and other marketers, including distributors, wholesalers, jobbers, and others who do not receive the said discriminatory prices.

PAR. 8. Respondent Standard Oil Co. (New Jersey), prior to December 1, 1911, owned substantially all the capital stock of respondent Standard Oil Co. (Kentucky), respondent Standard Oil Co. (Indiana), respondent Standard Oil Co. (Ohio), and Standard Oil Co. (California). All of the assets and liabilities of the Standard Oil Co. (California) were later acquired by respondent Standard Oil Co. of California (incorporated in Delaware on January 27, 1926).

Respondent Standard Oil Co. (New Jersey) and its subsidiaries were held by the Circuit Court of the United States for the Eastern District of Missouri to have illegally monopolized the production and sale of petroleum products. (The opinion of the court is recorded in 173 Federal Reporter at p. 177.) Acting under the court's decree of December 1, 1911, respondent Standard Oil Co. (New Jersey) distributed to its stockholders all of its stock in all of the other above-named

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Standard Oil companies and thereby withdrew from the control and direction of said companies. Thereafter respondent Standard Oil Co. (New Jersey) has at no time possessed or exercised any control or direction over the above-named Standard Oil companies.

PAR. 9. The "Supply Company" and the "Oil companies" on purchases through and from the "Supply Company" have received and accepted commissions, brokerages, and other compensation in lieu thereof in connection with the purchase of "TBA" products as hereinbefore found in paragraph 5; have purchased "TBA" products at discriminatory prices as hereinbefore found in paragraphs 7 and 8; and have obtained other preferential treatment from "TBA" sellers which was preferential to that allowed, afforded, or made available by such sellers to competitors of the respondents.

Since 1930 all the common stock of the "Supply Company" has been owned in equal amounts by the "Oil companies" either directly or through their wholly owned subsidiaries. In connection with the aforesaid purchases of "TBA" products through and from the "Supply Company," the "Supply Company" has been operated by and subject to the control of the "Oil companies" whereby the "Oil companies" have utilized the influence of their combined purchasing power on "TBA" sellers in the purchase of "TBA" products.

PAR. 10. The respondents have agreed and combined among themselves, through their uninterrupted ownership, control and operation of the "Supply Company" since 1930 and its use as an intermediary in the purchase of "TBA" products, to utilize the influence of their combined purchasing power in jointly buying "TBA" products and thereby to purchase the said products at illegally discriminatory prices; to receive illegal commissions, brokerages, or other compensation in connection with purchases of the said products, and to obtain other preferential treatment from sellers or vendors which was preferential to that allowed, afforded, or made available by such sellers to competitors of the respondents.

PAR. 11. Prior to 1930 the percentage of total sales of "TBA" products sold in the United States for replacement by the Oil companies was negligible. In the period from 1930 to 1949 the combined percentage of total sales of said Oil companies has grown to approximately 10 percent of the total replacement sales of "TBA" products in the United States.

PAR. 12. The effects of the adoption and use by respondents of the practices and activities hereinbefore found in paragraphs 8 through 11 hereof are as follows:

1. Injured, lessened, and prevented competition between respondents and other oil companies and distributors, wholesalers, and jobbers of "TBA" products in the purchase and resale thereof.
2. Eliminated competition between the "Oil companies" in the purchase of "TBA" products through the "Supply Company."
3. Foreclosed a large market to those manufacturers and vendors of the aforesaid products who refused to grant illegally discriminatory prices or to pay illegal commissions, brokerages, or other compensation to the respondents.
4. Increased substantially the size, power, and market control of respondents in purchase and resale of "TBA" products.

CONCLUSION

The aforesaid acts and practices of respondents in receiving and accepting commissions, brokerages, and other compensation or allowance or discount in lieu thereof in a manner and form as found in paragraph 5 herein are in violation of the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The aforesaid acts and practices of the said respondents in knowingly inducing and receiving and knowingly accepting the discriminations in price as found in paragraphs 6 and 7 herein are in violation of the provisions of subsection (f) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

The aforesaid acts and practices of respondents as hereinbefore found in paragraphs 8, 9, 10, and 11 herein are all to the prejudice of the public and have a dangerous tendency to hinder, lessen, and restrain competition in the purchase and resale of "TBA" products in commerce within the intent and meaning of the Federal Trade Commission Act; and a tendency to create in respondents a monopoly in the purchase, sale, and distribution of "TBA" products, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, Under the authority vested in the Federal Trade Commission by section 2 (c) and section 11 of the Clayton Act, as amended, that the respondent, Atlas Supply Co., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase or sale of automobile tires, tubes, batteries or other automobile parts or

accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(a) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which the respondent, Atlas Supply Co., is the buyer or acts for, or in behalf of, or subject to the direct or indirect control of the buyer.

(b) Transmitting, paying, or granting, directly or indirectly, in the form of money, dividends, or credits or in the form of services or benefits provided or furnished, or otherwise to any buyer any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, received on such buyer's purchases.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (c) and section 11 of the Clayton Act, as amended, that the respondents, Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), and their respective officers, directors, agents, representatives, and employees, when acting directly or through any intermediary (including Atlas Supply Co.) in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for, on in behalf of, or subject to the direct or indirect control of said respondents, in the form of money, dividends or credits or in the form of services or benefits provided, or furnished, or otherwise, any commission, brokerage, or other compensation, or allowance or discount in lieu thereof, upon purchases for their own accounts.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (f) and section 11 of the Clayton Act, as amended, that the respondent, Atlas Supply Co., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting a net price from any seller known by respondent or its representatives to be below the net price at which

said products of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for respondent's business, or where respondent is competing with other customers of the seller: *Provided, however*, That the foregoing shall not be construed to preclude the respondent from defending any alleged violation of this order by showing that a lower net price received or accepted from any seller makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are by such seller sold or delivered to respondent, and when differentials are thus shown by respondent to be so justified they are not to be construed as in violation of this order; and *Provided further*, That nothing herein contained shall prevent respondent from rebutting a prima facie case of alleged violation of this order based upon discriminations which may be practiced subsequent to the date of this order by showing that its seller's lower price or the furnishing of services or facilities to respondent was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

It is further ordered, Under the authority vested in the Federal Trade Commission by section 2 (f) and section 11 of the Clayton Act, as amended, that the respondents, Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, and their respective officers, directors, agents, representatives, and employees, in connection with the purchase of automobile tires, tubes, batteries, or other automobile parts or accessories from or through any medium (including Atlas Supply Co.) which is owned in any degree or controlled by one or more of said respondent Standard Oil Cos., in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting a net price from any seller known by the respondent or its representatives, who so induces, receives, or accepts such discrimination in price, to be below the net price at which said products of like grade and quality are being sold by such seller to other customers, where the seller is competing with any other seller for said respondent's business, or where said respondent is competing

Order

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with other customers of the seller: *Provided, however*, That the foregoing shall not be construed to preclude the said respondent from defending any alleged violation of this order by showing that a lower net price received or accepted from any seller makes only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are by such seller sold or delivered to said respondent, and when differentials are thus shown by said respondent to be so justified they are not to be construed as in violation of this order; and *Provided further*, That nothing herein contained shall prevent said respondent from rebutting a prima facie case of alleged violation of this order based upon discriminations which may be practiced subsequent to the date of this order by showing that its seller's lower price or the furnishing of services or facilities to such respondent was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

It is further ordered, Under the authority vested in the Federal Trade Commission by the Federal Trade Commission Act, that respondents, Atlas Supply Co., Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. of California, Standard Oil Co. (Indiana), and Standard Oil Co. (New Jersey), corporations, their officers, agents, representatives, and employees, in connection with the purchase of automobile tires, tubes, batteries or other automobile parts or accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between any two or more of said respondents to do or perform any of the following things:

Exerting the influence of their combined purchasing power, directly or indirectly, in jointly buying said products so as to obtain any price, discount, rebate, allowance or any other treatment from a seller which is preferential to that allowed, afforded or made available by such seller to competitors of the respondents or any of them.

It is further ordered, That the provisions set forth in the last foregoing paragraph shall become effective on and after 12 months from the date this order is issued.

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 19, 1951].

IN THE MATTER OF
ARNOLD A. SALTZMAN AND IRVING SALTZMAN TRADING
AS PREMIER KNITTING COMPANY

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

Docket 4659. Complaint, Dec. 15, 1941—Decision, July 20, 1951

The term "Shetland" has long been applied to a particular type of wool fiber taken from the fleece of Shetland sheep raised on the Shetland Islands or on the adjacent mainland of Scotland, and has long been well and favorably known to the purchasing public, and, when used to designate or describe a product made of yarns having the general appearance of wool fibers, is understood by it as denoting a product made entirely from the fleece of the aforesaid sheep.

The words "Angora Wool" have long been applied to particular types of wool fiber taken from the hair of the Angora goat and are well and favorably known to the purchasing public.

The term "Gora" is a contraction of "Angora" and, even though combined with the coined word "Kittn," implies to the purchasing public that products so labeled and designated are made of yarns composed entirely of the hair of the Angora goat or its young.

Where two individuals engaged in the interstate sale and distribution of sweaters—

- (a) Made use of the term "Imported Shetland" on labels of certain sweaters which were knitted from yarn spun of wool from African Merino sheep; and
- (b) Made use of the trade name "Kittn-Gora" on the labels of sweaters knitted from yarn composed of 50 percent lambs wool and 50 percent hair of young Angora goats;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to their said products and thereby cause its purchase thereof:

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.

As respects respondents' contention that the allegations of the complaint as to their use of the term "Imported Shetland" should be dismissed because the yarn concerned was purchased by them from a reputable company which so represented it, and also because they discontinued such markings in 1942:

The Commission was of the opinion from the facts of record that because of the appearance and price of the yarn respondents knew or should have known that it was not made of genuine Shetland wool; and,

It appearing further that respondents believed that the term might properly be applied to wool of that type, even though the sheep were raised in other localities, and that they discontinued the use of the term only after the issuance of the complaint, and so as to comply with the Commission's interpretation of the term as there shown: