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IN THE MATTER OF
CELANESE CORP. OF AMERICA

Docket 4934. Complaint, Mar. 24, 1943—Decision and order, Aug. 2, 1953

Charge: Neglecting, unfairly or deceptively, to make material disclosure as to composition of product and advertising falsely or misleadingly as to composition, nature, qualities, properties or results and comparative merits of product; in connection with the manufacture and sale of acetate rayon yarn and fabrics manufactured from said yarn.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Davies, Richberg, Tydings, Beebe & Landa, Roberts & McInnis and *Mr. G. Kirby Munson*, of Washington, D. C., and *Mr. Matthew H. O'Brien*, of New York City, for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached decision of the hearing examiner shall, on August 2, 1953, become the decision of the Commission.

Commissioner Carretta not participating.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

This proceeding came on to be considered by the above-named Hearing Examiner heretofore duly designated by the Commission on April 16, 1945, upon the complaint, the answer of respondent, testimony and other evidence introduced in support of and in opposition to the allegations of the complaint, and proposed findings and conclusions presented by counsel, all testimony and evidence being made a matter of record and duly filed in the office of the Commission.

The complaint herein was filed on March 24, 1943, and the taking of testimony commenced on May 16, 1945, during the course of which some 4,500 pages of testimony of 105 witnesses, and 1,750 exhibits were received. Much of the testimony was highly technical in nature, having to do with the production of man-made fibers by chemical and mechanical processes and means. During the course of the proceedings unavoidable delays such as appeals and cross-appeals were encountered, on two occasions the matter was reopened on motion of the respondent for the reception of further testimony and evidence and on one occasion, November 15, 1949, the record was ordered reopened by the Commission for the purpose of complying with the Commission's decision on cross-appeals.

Thereafter, on January 19, 1951, the matter was ordered by the Commission to be placed on its "suspense calendar" pending the outcome of a Trade Practice Conference Proceeding specially called to consider proposed revision of the Trade Practice Rules for the Rayon Industry, a subject of prime importance to the major issues joined in this proceeding. The aforementioned Rayon Rules had been in force since promulgation of same by the Commission on October 26, 1937, and it was partially because of failure of respondent to designate its fibers and fabrics as "rayon" (a subject dealt with in said Rules although the Rules, as such were not squarely in issue), that the present proceedings were instituted. On December 11, 1951, the Commission promulgated its "Trade Practice Rules for the Rayon and Acetate Textile Industry," thereby superseding the Rules of 1937. On March 4, 1952, the Commission, by order, restored the matter to its active file with direction to the Examiner to:

* * * go forward in regular course on the matters remaining in controversy.

An interpretation of the last-mentioned order resulted in a further order of the Commission, dated September 18, 1952, dismissing certain charges of the complaint and thereafter, upon motion of the respondent, the Hearing Examiner on February 6, 1953, reopened the matter for reception of further testimony and evidence after completion of which an order closing the case for taking of testimony and reception of evidence was filed on February 27, 1953.

For the purposes of the present order necessitating a full consideration of the several issues involved, the charges of the complaint are, for convenience, segregated and grouped into five categories, separately denoted, and which will be dealt with seriatim under the several headings.

The complaint recites:

Respondent, Celanese Corporation of America, is engaged in the manufacture, sale and distribution of acetate rayon yarn, and fabrics produced from such yarn, which it sells and distributes under the name "Celanese"; acetate rayon is a chemical fiber which may be manufactured so as to simulate natural fibers in texture and appearance to such extent that members of the purchasing public are unable to distinguish fabrics manufactured from acetate rayon, so as to simulate natural fibers, and fabrics manufactured from natural fibers.

The specific charges are:

Charge I

Respondent's acetate rayon fabrics simulate, in texture and appearance, fabrics composed of silk, the product of the cocoon of the silk worm, but respondent does not inform the purchasing public that

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such manufactured fabrics are not made from silk but from rayon; that failure by respondent to make such disclosure is misleading and deceptive and members of the purchasing public are thereby led to believe said fabrics are composed of silk.

Charge II

Respondent also manufactures from acetate rayon fibers, and offers same for sale, and sells, fabrics which resemble, in appearance and texture, fabrics manufactured from wool, without informing the purchasing public that such fabrics so resembling wool, are in fact acetate rayon; that failure by respondent to make such disclosure is misleading and deceptive.

Charge III

Respondent, in connection with selling its products manufactured from rayon but which resemble fabrics made from silk, designates, describes and refers to certain of its fabrics as "taffeta," "moire," "crepe," "satin" and "jersey," without adequately disclosing the true fiber content; that the quoted designations have long been associated in the public mind with fabrics composed of silk and the use of such terms, unaccompanied by adequate disclosure of the actual fiber content as rayon, not silk, is misleading and deceptive.

Charge IV

Respondent, in an endeavor to mislead and deceive the public as to the true nature of its products, has made use of the following statements and representations:

(a) "Under a current ruling of the Federal Trade Commission, Celanese yarns and fabrics are classified as rayon";

(b) "all rayons are not alike";

(c) "an easy way to differentiate Celanese from rayons of the cellulose type";

(d) "Celanese is different from any type of fabric ever made";

(e) " * * * because Celanese is a different kind of material";

(f) "Celanese is like nothing you have ever known"; and

(g) "Celanese has qualities that put it in a class by itself".

All of the foregoing are charged as designed to import and imply that respondent's products are not composed of rayon but of fibers other than rayon.

Charge V

Respondent, by its advertisements represents and implies that its fabrics:

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- (a) will not shrink;
- (b) are not affected by perspiration, salt water or sea air;
- (c) do not absorb body odors;
- (d) are cooler in summer and warmer in winter;
- (e) do not get soggy;
- (f) will not absorb dirt or most common stains;
- (g) the colors in said fabrics are especially fast;
- (h) have a high degree of resiliency and are more resistant to wrinkles than are other fabrics;
- (i) wear better and last longer than do other fabrics.

In considering the foregoing charges under their separate denotations as outlined, the following findings and conclusions are reached and stated:

Charge I. Respondent, on April 18, 1952, filed its motion to dismiss certain portions of the complaint, among such being the presently considered charge, pursuant to which motion the Commission, (noting that it had, on December 11, 1951, promulgated the new Trade Practice Rules for the Rayon and Textile Industry which recognize that "rayon" and "acetate" are different textile fibers, and that respondent has accepted such Rules and is presently identifying its acetate textile products as acetate, in accordance with the provisions of said rules), on September 18, 1952, passed the following order:

"It is ordered, That the allegations of the complaint relating to the charge that respondent's cellulose acetate textile products are rayon and that respondent's failure to identify said products as rayon is misleading and deceptive be, and they hereby are, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action."

By the aforesaid order, passed by the Commission, the foregoing charge had been dismissed without prejudice, and such order is here adverted to solely that this present order shall show consideration and disposition of all issues joined.

Charge II. Respondent is here charged with nondisclosure of the true fabric content, as acetate rayon, of its materials which resemble wool in appearance. There is no question here involved which would call into play any of the provisions of the Wool Products Labeling Act of 1939, or of the Rules and Regulations passed pursuant thereto. This charge may be considered analogous to the preceding one which alleged that respondent's products resemble silk whereas, under this allegation, the product resembles wool.

Inasmuch as the Commission has seen fit to dismiss the charge of simulating silk, it would appear that the same course should be followed in the present instance, and for the same reasons, that is, that

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if the respondent, being signatory to the new Rayon and Acetate Rules, properly identifies its fabrics in accordance with the rules, then there will be no misleading or deception of the public.

For the reasons above stated the charge in this behalf is dismissed without prejudice.

Charge III. Under this heading respondent is charged with use of the terms "taffeta," "moire," "crepe," "satin" and "jersey," without disclosing the true fabric content. This charge is based upon the allegation that the terms or designations quoted have "long been associated in the public mind with fabrics composed of silk," and that the use of said terms, unaccompanied by adequate disclosure of the actual fiber content, to wit, fibers other than silk, is misleading and deceptive.

During the course of the proceedings counsel in support of the complaint abandoned that portion of the complaint which refers to the term "jersey," such being the designation of a special weave or knit of wool peculiar to the wool industry and obviously not in the same category with the remaining terms in the group, all of which the complaint charged, in effect, were preempted by the silk industry and so understood by the general public.

Rule 3, entitled "Construction and Weave Terms," of the aforesaid Rules of December 11, 1951, covers the situation here presented and especially treats, *eo nomine*, of the future use of these terms by the industry. Therefore, the same reasoning which motivated the dismissal of CHARGES I and II should apply here with equal force.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

Charge IV. Here respondent is charged with the use of seven separate representations, all of which, it is alleged, were designed to mislead and deceive the public into the belief that respondent's fabrics were not composed of rayon but of fibers other than rayon.

In this connection we are again met with the issue of the fiber content of respondent's fabrics and of the nomenclature covering same as under Charge I, except that here, instead of failure to disclose rayon content, respondent is charged with an attempt to affirmatively, or by innuendo, represent that its product is "different" and "in a class by itself."

Many of the foregoing expressions may properly be considered as mere puffery, and certainly a producer should be allowed some reasonable latitude to extol his wares as otherwise the practical and economic justification for advertising and publicity ceases to exist. Furthermore, there is nothing of record to substantiate the charge that any or

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all of the alleged usages ever in fact attained the end for which they were allegedly formulated and used.

In addition to the foregoing reasoning, it will be seen that all of the representations alleged are inextricably associated with fabric nomenclature, the charges concerning which were dismissed under CHARGE I, as above.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

Charge V. All of the representations made by respondent under this charge may be classified as referring to the physical attributes, qualities or characteristics claimed by respondent in favor of its products. The vast majority of these representations were publicized through the medium of radio continuities broadcast during the year 1942, so it would appear there is no present public interest in the evanescent statements of a radio announcer of a past decade. Concerning the remaining advertisements, howsoever disseminated, all such bear date prior to July of 1946 at which time the Commission had completed its proof as to these advertisements, so that the record is devoid of any indication of current or actual usage of same for some eight years.

Apropos the immediate foregoing, reference is made to the afore-described Rayon and Acetate Textile Industry Rules of December 11, 1951, Group II, Rule "A," entitled: "Labeling Information as to Treatment and Care of Product," and Rule "B," entitled: "Educational Program as to Treatment and Care of Product." These rules, agreed to by the respondent, provide for the giving, by tag or label attached to products, of adequate information regarding care, handling and service of fabrics, including the proper methods of dyeing, cleaning, washing and ironing thereof, as well also the furnishing and disseminating, through advertisements, educational campaigns or other media of publicity, accurate information as to the proper care, treatment and cleaning of rayon and acetate fabrics to the end that consumers may obtain and enjoy full benefit of the desirable qualities and service of such products. In furtherance and support of the objectives of the Rules as an entirety, and of Rules Group II, "A" and "B," and since the promulgation thereof by the Commission, the respondent has appropriated approximately \$2,000,000 in excess of its normal advertising budget; has made use of radio, television, advertising in the largest magazines of nation wide circulation; educational services to stores and consumers on a national scale; issued in excess of 100,000,000 tags and labels dealing with fiber identification and care; and further, at its own expense, has reprinted the Rules and distributed same to

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approximately 20,000 retailers, garment manufacturers, mills and to those engaged in the chain of distribution in the fabric field. The foregoing is recounted as indicating an intention on the part of the respondent to abide by the Rules and thus, by its example as a dominating factor in its field, to have a beneficial effect upon others.

For the reasons above stated the charges in this behalf are dismissed without prejudice.

For the reasons above given, and under the circumstances here presented, the public interest does not require any corrective action at this time. It is accordingly,

Ordered, That the complaint in this proceeding be, and the same hereby is, dismissed, without prejudice.

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IN THE MATTER OF
FRUITVALE CANNING COMPANY*Docket 5989. Order and opinion, August 4, 1953*

Before *Mr. Abner E. Lipscomb*, hearing examiner.
Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.
Hadsell, Murman & Bishop, of San Francisco, Calif., for respondent.

ORDER DENYING RESPONDENT'S PETITION FOR REHEARING OF APPEAL

Respondent, subsequent to the filing of its answer to the complaint in this proceeding, filed a motion with the hearing examiner for a bill of particulars. The hearing examiner issued an order granting said motion, and counsel supporting the complaint appealed to the Commission from said order. The Commission, after determining that a prompt decision on the appeal was necessary to prevent unusual delay and expense in the disposition of this proceeding, considered said appeal on its merits, and on February 9, 1953, issued an order sustaining the appeal, vacating and setting aside the hearing examiner's order, and remanding the case to the hearing examiner for trial in regular course. Respondent, on June 29, 1953, filed a petition with the Commission for a rehearing on the said appeal. Counsel supporting the complaint, on July 3, 1953, filed an answer opposing the petition.

The only point raised by respondent in said petition for rehearing which was not before the Commission at the time of its decision on the appeal is that the Commission, on May 19, 1953, denied appeals of counsel supporting the complaints in the matters of Distillers Corporation-Seagrams Ltd., Docket No. 6047, and Schenley Industries, Inc., Docket No. 6048, from orders of the hearing examiner by which motions of the respondents for bills of particulars were granted in part and denied in part. Respondent contends that the Commission's action on those appeals "indicates a change of view more favorable to respondents who seek, through bills of particulars, more informative details than are given in the forms of complaints in use in these proceedings."

The Commission, in its orders denying the appeals of counsel supporting the complaints in the two cases cited by respondent, stated that it was not shown that prompt decisions on the appeals were necessary to prevent unusual delay and expense in the disposition of the proceedings, and also that the hearing examiner, by his rulings on respondents' motions for bills of particulars, had not abused the discretion vested in him. The Commission's actions in those cases cannot be construed as representing a change in view with respect to requests

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for bills of particulars. The complaints in those two cases charged violations of Section 5 of the Federal Trade Commission Act. The complaint in this case charges violation of subsection (a) of Section 2 of the Clayton Act. It is obvious that complaints involving violations of the broad terms of the Federal Trade Commission Act might require more particularization than complaints involving violations of the Clayton Act, where the statutory offenses are defined in greater detail.

The Commission, in its order of February 9, 1953, sustaining the appeal of counsel supporting the complaint in this case, expressed the opinion that the complaint herein is not only legally sufficient but also that the absence of further particulars therein cannot operate to deprive the respondent of a full and fair hearing. Respondent's petition for a rehearing on the appeal presents no reason for changing that opinion.

The Commission having duly considered respondent's said petition and answer thereto, and being of the opinion that the rehearing requested is not warranted:

It is ordered, That respondent's said petition for rehearing be, and it hereby is, denied.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for trial in regular course.

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Commissioners Mason and Carretta concur in this order and repeat that, in their opinion, the complaint issued in this matter sufficiently informs respondent of the statutory violations with which it is charged. Commissioners Mason and Carretta also repeat that they are of the opinion that if counsel in support of the complaint seeks to prove at the hearing violations other than those alleged in Paragraph 7 of the complaint, counsel for the respondent may then renew his motion for a bill of particulars.

Consent Settlement

IN THE MATTER OF
DICTOGRAPH PRODUCTS, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6095. Complaint, Apr. 24, 1953—Decision, Aug. 5, 1953

Where a corporation engaged in the manufacture and in the competitive interstate sale and distribution of its "Acousticon" hearing aids; in advertising the same through radio and television commercials, and in newspapers and periodicals, circulars, pamphlets, bulletins, and other advertising media, including newspaper mats, reprints of advertisements used by it, radio and television scripts, circulars, pamphlets, and bulletins furnished by it to its distributors, who used the same to advertise said product, it paying a portion of said distributors' advertising expenses; directly or by implication—

- (a) Falsely represented that the Government, through the U. S. Public Health Service, had made an investigation of hearing aids;
 - (b) Falsely represented that a booklet entitled "U. S. Government Exposé of Hearing Aids" was published by the Government and contained a report by it on such products;
 - (c) Falsely represented that as a result of such investigation the Government said all one-performance hearing aids were failures; when in fact the Government had neither held that such type or any other class of hearing aids were failures; and
 - (d) Falsely represented that with the exception of its own product no hearing aids had been improved in recent years and that only its product gave satisfactory hearing help; and
 - (e) Falsely represented that its said aids were recommended by the Government:
- Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Theodore F. Tonkonogy, of New York City, for respondent.

CONSENT SETTLEMENT¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 24, 1953, issued and subsequently served its complaint on the respondent named in the caption hereof,

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on August 5, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.