

Decision

IN THE MATTER OF
SILF SKIN, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6772. Complaint, Apr. 8, 1957¹—Decision, June 9, 1959

Order requiring New York City manufacturers to cease representing that their "Silf Skin" girdles were seamless.

A charge of advertising the girdles falsely as "full-fashioned" was dropped as not established in the record.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Herbert S. Greenberg, New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER
PRELIMINARY STATEMENT

The complaint in this proceeding alleges that Silf Skin, Inc., a corporation, George Lacks and Harold Lacks, individually and as officers of said corporation, hereinafter called respondents, have violated the provisions of the Federal Trade Commission Act by misrepresenting the "Silf Skin" girdles which respondents manufacture, sell and distribute.

Counsel supporting the complaint contends that, through the use of statements made in their advertising, which is hereinafter set out in paragraph 3 of the Findings of Fact, respondents represented directly or by implication that:

(a) Said girdles are "full-fashioned;" that is, that they are knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the shape of the limb or body, the reduction in size looking to such shaping being effected by a process of narrowing in which the loops of various needles are transferred inward to an adjacent needle which loops are then knit by the transferee needle. The flat fabric at the conclusion of the knitting operation is joined at the edges of selvages to make a garment which conforms to the shape of that part of the body upon which it is worn.

(b) Said girdles are made on the same principle as full-fashioned stockings.

(c) Said girdles are seamless.

¹ Amended May 24, 1957.

Findings

55 F.T.C.

Counsel supporting the complaint further contends that the statements and representations used and disseminated by respondents and which are set out in paragraph 3 of the Findings of Fact are false, deceptive and misleading in that said girdles are not "full-fashioned," are not made on the same principle as "full-fashioned" stockings, and are not "seamless."

Respondents deny that the statements made in their advertising are false, deceptive and misleading and contend that their girdles are "full-fashioned" and "seamless." Respondents contend that their girdles are "full-fashioned" for the reason that they are "narrowed" and "widened" in the knitting process to conform to the shape of that part of the body upon which said girdles are intended to be worn; are of uniform and even texture and the shape of such girdles will be retained for the natural life of the garment; that said girdles are "seamless" in that, during the process of manufacture, portions of said girdles are joined together by a knitting operation known as "looping," as contrasted to a sewing operation, whereas, in the terminology of the knitting trade, the term "seam" is a joining resulting from a sewing operation.

Hearings on the complaint have been concluded and the matter is before the hearing examiner for an initial decision. The hearing examiner has considered the evidence, the testimony of witnesses, some of whom are experts in the knitting industry, in support of the complaint and on behalf of respondents. Proposed findings and conclusions have been filed by respective counsel and a memorandum filed on behalf of respondents. These have been considered by the hearing examiner. All proposed findings of fact and conclusions of law not specifically found or concluded herein are rejected. Upon the basis of the entire record the hearing examiner makes the following findings of fact, conclusions and order:

FINDINGS OF FACT

1. The respondent Silf Skin Inc. is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 10 East 39th Street, New York, N.Y. The individual respondents George and Harold Lacks are president and secretary-treasurer, respectively, of said corporation and formulate, direct and control the acts, policies and business affairs of the corporate respondent.

1899

Findings

2. Respondents are now and have been for more than five years immediately preceding the issuance of the complaint herein, engaged in the manufacture, sale and distribution of ladies' girdles and panty girdles designated "Silf Skin." 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 purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents' volume of business in such products is substantial.

3. In the course and conduct of their business and for the purpose of inducing the purchase of their "Silf Skin" girdles, respondents have made and are now making, and have caused and are now causing to be made, statements as to the method by which their said girdles are manufactured, said statements appearing in newspapers and magazines distributed throughout the United States, and on letterheads, advertising matter in catalogues, circulars and other advertising material circulated and distributed by respondents to dealers in ladies' apparel, for further distribution by such dealers to the purchasing public throughout the several States of the United States and in the District of Columbia. Some of the statements and representations made in respondents' advertising are the following:

... Silf Skin ... America's most popular seamless full fashioned girdles and panty girdles.

Silf Skin foundations ... are made on the same principle as fine full fashioned stockings ...

Silf Skin full fashioned bias knit. Shaped without seams for comfort and control.

Not a seam to cut you anywhere!

Wear a divinely comfortable Silf Skin. Knit by a patented process entirely without seams. Its full fashioned ...

Once you try the only full fashioned seamless panty girdle in the world—
Its full-fashioned; made of famous seamless SILF SKIN!

Silf-Skin full-fashioned foundations.

Through a revolutionary new double fashioning process, a diamond shaped bias crotch has been knit in ENTIRELY WITHOUT SEAMS.

The only seamless full-fashioned foundations made in America—

AN IMPORTANT MESSAGE TO ALL corset buyers ... ! from the manufacturers of America's only FULL-FASHIONED SEAMLESS GIRDLES SILF SKIN ... SILF SKIN is permanently contoured by narrowing ... is America's only full-fashioned, seamless girdle. Full fashioned means comfort and fit to every woman ... means extra, easier sales to you ... Stock FULL-FASHIONED SEAMLESS SILF-SKIN and you stock a sure source of sales, a proved volume and traffic builder.

Findings

55 F.T.C.

4. By the use of said statements as above, said respondents have represented that their girdles are "full-fashioned" and "seamless," and that their said girdles are made on the same principle as "full-fashioned" stockings.

5. A preponderance of the reliable, probative and substantial evidence shows that, in the knitting industry, the terms "full-fashioned," "fully-fashioned" and "fashioned" connote and indicate that the product was made on what is known as a flat bed knitting machine, whether the machine be the cotton type or hand operated and hand decked type. The terms mean, generally, that the garment consists of components which have been knitted to shape on a flat bar or flat bed machine in which the contour is as it would be patterned if it were cut out of a piece of woven material, with selvedge edges and has been widened or narrowed by stitch or loop transfer from one needle to an adjacent needle or needles to conform to that pattern.

6. On the other hand, respondents' girdles are manufactured on a circular knitting machine. Near the top of the machine is a cylinder of a given circumference, depending on the size of the garment to be knitted, with a certain number of needles in vertical position around the cylinder. The shaping of respondents' girdles is not accomplished by stitch or loop transfer as "full-fashioned" garments are shaped by widening and narrowing in their manufacture. Unlike the shaping of fabrics in the process of manufacturing "full-fashioned" products such as hosiery on a flat bed knitting machine, the shaping of respondents' girdles in the process of their manufacture on respondents' circular knitting machines is accomplished by inactivating and reactivating needles, the stitch or loop remaining on the needle while it is kept out of action and no stitches or loops are transferred to an adjacent needle or needles, as in the manufacture of "full-fashioned" hosiery. There is no narrowing or widening in the process of manufacturing respondents' girdles in the sense that the terms widening and narrowing are used in the knitting industry when referring to "full-fashioned" products for the reason that there is no stitch or loop transfer from one needle to an adjacent needle or needles. One of the distinctive characteristics of "full-fashioned" products are fashion marks, which are bumps or dots in the knitted fabric resulting from stitch or loop transfer, that is, the placing of two stitches or loops on the same needle and then drawing a single stitch or loop through the two stitches or loops.

1899

Findings

7. In the case of *Vawne Foundations, et al.*, 47 F.T.C. 1221, Docket No. 5106, the Commission defined the term "full-fashioned" as follows:

Full-fashioned garments are knit on a flat bed or bar machine in the course of which flat fabric is shaped in the knitting to conform to the limb or body. The reduction in size looking to such shaping is effected by a process of "narrowing" under which the loops of various needles are "transferred" inward to an adjacent needle, which loops are then knit by the transferee needle. The flat fabric at the conclusion of the knitting operation, in the case of hosiery for instance, is joined at the edges or selvages to make a stocking which conforms to the shape of the leg.

Respondents' girdles are not made on the same principle as "full-fashioned" hosiery for the reason that full-fashioned hosiery is manufactured on flat bed knitting machines, whereas respondents' girdles are manufactured on circular knitting machines in a manner and by a process different from the manufacture of "full-fashioned" hosiery. Respondents' girdles are not seamless. The girdle which is in evidence and identified as Commission Exhibit 8 has seams at the side, top and bottom. The panty girdle, identified as Commission Exhibit 10 has seams at the front, back, top and at the leg openings. The sections of respondents' girdles are joined on a looping machine which forms a seam.

8. The terms "full-fashioned," "fully-fashioned," and "fashioned," as applied to articles of wearing apparel, are regarded as synonymous in the knitting industry and as descriptive of apparel which has been shaped in the knitting by the process of widening and narrowing. "Full-fashioned" articles of wearing apparel are favorably known to the public for holding their shape and as being more valuable and expensive than garments which have been cut and sewn together, and there is a preference on the part of the public for "full-fashioned" articles of wearing apparel, including girdles.

9. In the conduct of their business, respondents are in substantial competition, in commerce, as defined in the Federal Trade Commission Act, with other corporations and individuals and with firms who are engaged in the sale of girdles. The use by respondents of the statements and representations as found in paragraph 3 hereof had and now has the tendency and capacity to mislead and deceive dealers and the public into the erroneous and mistaken belief that said statements were and are true and

Opinion

55 F.T.C.

into the purchase of substantial quantities of respondents' products because of such erroneous and mistaken belief. As a consequence thereof, trade in commerce has been unfairly diverted to respondents from their competitors and injury has thereby been done to competition in commerce.

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

ORDER

It is ordered, That respondents Silf Skin, Inc., a corporation, and its officers, and George Lacks and Harold Lacks, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of girdles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that said girdles are seamless.

OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaint in this proceeding charges the respondents with violating the Federal Trade Commission Act by misrepresentation in connection with the sale and distribution of "Silf Skin" girdles. The matter is before the Commission upon the appeal of the respondents from the hearing examiner's initial decision holding that the charges in the complaint are sustained by the record and containing an order to cease and desist the practices found to be unlawful.

There are two issues raised on this appeal: The first is whether respondents are entitled to use the terms "full-fashioned," "fully-fashioned" and "fashioned" to describe their "Silf Skin" girdles, and the second is whether they are entitled to use the word "seamless" to describe such garments.

On the first issue the hearing examiner found that the terms "full-fashioned," "fully-fashioned" and "fashioned," mean, generally, "that the garment consists of components which have been knitted to shape on a flat bar or flat bed machine in which the

1899

Opinion

contour is as it would be patterned if it were cut out of a piece of woven material, with selvedge edges and has been widened or narrowed by stitch or loop transfer from one needle to an adjacent needle or needles to conform to that pattern." He further found that respondents' girdles are made by a different process involving the use of a circular knitting machine in which shaping is accomplished by inactivating and reactivating needles and, therefore, that such garments were misrepresented when advertised by the use of terms such as "full-fashioned."

Respondents' position is that the term "full-fashioned" describes a knitted product of uniform texture shaped to the human body by widening and narrowing in such fashion that the given shape will be retained for the useful life of the garment, and that since "Silf Skin" girdles conform to this definition, it was not deceptive to represent them as "full-fashioned."

The substance of testimony by certain witnesses produced by counsel supporting the complaint was that the terms "full-fashioned," "fully-fashioned" and "fashioned" refer to products made on a flat bed or flat bar knitting machine, and are shaped in the knitting by widening or narrowing accomplished by the transfer of stitches or loops from one needle to another. It is apparent from their qualifications and background that these witnesses defined the meaning of the aforesaid terms as they may be understood in the industry rather than upon any apparent familiarity with the consumer's point of view.

Respondents' witnesses gave somewhat varied definitions of "full-fashioned" but similar at least to the extent that none defined the term as being confined in meaning to a fabric knitted on a flat bed or flat bar machine. Among such witnesses were some long closely associated with the retail trade.

The English dictionary definitions cited in the record, to the extent they support the interpretation of either side in this case, seem to support the respondents. An example is the definition found in Webster's New International Dictionary: "full-fashioned: knitted so as to conform to the shape of the leg and foot by dropping stitches as the contour narrows, used in hosiery, underwear, etc."

We believe that to restrict the definition of "full-fashioned," "fully-fashioned," and "fashioned" to a fabric knitted on a particular type of machine constitutes an extremely narrow and quite technical definition—a definition so limited that it should

Opinion

55 F.T.C.

only be adopted as a result of facts and evidence of record which we do not find here. The manufacturing process by machine methods is not a static but a growing and constantly changing art. To require a term or terms which give prestige to a product to be restricted in their use to products manufactured on a particular type of machine is a matter of serious concern. In all the circumstances, we are of the opinion that the allegations of the complaint in this connection have not been supported by substantial evidence. Counsel cites previous cases in which the Commission has dealt with the word "fashioned" or "full-fashioned," namely, *Chipman Knitting Mills, et al.*, 12 F.T.C. 133 (1928), and *Vawne Foundations, et al.*, 47 F.T.C. 1221 (1951). There is no conflict in our holding in this case and the prior decisions. In the *Chipman* and *Vawne* matters, the garments involved did not have even the elemental characteristics of a full-fashioned garment, which is that the fabric is structurally and with a uniform texture shaped in the knitting to conform to the contour of the limb or body. This formerly could be accomplished only on the flat bed or flat bar machines, but a finding to that effect was not essential to the disposition of either the *Chipman* or *Vawne* matters. In the instant matter there is no question that respondents' garments possess such a characteristic; indeed one of the witnesses in support of the complaint testified that respondents' garments have all the virtues ascribed by him to "full-fashioned" garments including the fact that the fabric is shaped in the knitting to conform to the contour of the limb or body.

Counsel supporting the complaint also cites various court cases including *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67 (1934), and *Benton Announcements, Inc., v. Federal Trade Commission*, 130 F. 2d 254 (1942), to support his contention to the general effect that the public is entitled to get what it chooses. We are thoroughly in accord with this line of cases. The distinction here is that we are unable to determine what the purchaser actually expects to get when buying a full-fashioned girdle. It does appear from this record that the expectation is to receive something more than solely a shaped garment such as one given shape by the simple process of cutting and sewing. Clearly, however, there is no sufficient evidence to justify a finding that the consumer expects the product to be made on a flat bed or flat bar machine and shaped in the knitting

1899

Opinion

by widening and narrowing accomplished by the transfer of stitches or loops from one needle to another. If such is the understanding of the ordinary purchaser, it has not been established in this record.

In view of our ruling, it is unnecessary to decide whether or not "full-fashioned," "fully-fashioned" and "fashioned" all have the same meaning as applied to wearing apparel. Moreover, since the meaning of "full-fashioned" has not been satisfactorily established, we cannot affirm the hearing examiner's finding that respondents have falsely represented their girdles to be made on the same principle as full-fashioned hosiery.

The other issue raised concerns respondents' use of the word "seamless" to describe their "Silf Skin" girdles. Respondents argue that these girdles in their "essential features" contain no palpable seam or sewed seam. The representation of "seamless," respondents contend, does not apply to the finishing at the top and bottom of their girdles which clearly is seamed. The advertisements, however, are not so qualified.

The components of respondents' girdles are looped together on a looping machine. It is as to this joining that respondents claim there is no palpable seam. However, even the assertion that there is no palpable seam seems to admit there is a seam, although possibly a slight seam. A witness of respondents' conceded that "Silf Skin" girdles have a very slight seam with reference to the parts joined by looping. Witnesses testifying for the complaint were agreed that the looping created seams. Several witnesses testified to the effect that "seamless" means knit in a tube with no joining required.

We conclude upon the record that respondents' "Silf Skin" girdles are not seamless since they contain seams not only in the finishing at the top and bottom of the garments but also in the joining of fabric by looping.

A communication was received from respondents' counsel on May 5, 1959, (after final argument on the merits and while the Commission had the case under advisement pending formal decision) in which he advises that women's stockings sold as "seamless" are joined at the top by "looping" in the same manner as respondents' girdles are joined and makes a qualified request for further hearings on this phase of the case. The request is denied. Hosiery and girdles are obviously in somewhat different fields

Order

55 F.T.C.

and the considerations relative to the one might not necessarily be the considerations relative to the other.

The respondents' appeal is granted as to the issue concerning the terms "full-fashioned," "fully-fashioned" and "fashioned" and denied as to the issue concerning the term "seamless." The initial decision, to the extent that it is contrary to the views expressed herein, is modified to conform with such views. An appropriate order will be entered.

Commissioner Tait did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard upon the respondents' appeal from the hearing examiner's initial decision; and

The Commission, for the reasons stated in the accompanying opinion, having granted in part and denied in part the aforementioned appeal, and having modified the initial decision to the extent it is contrary to the views expressed in the said opinion:

It is ordered, That the following order be, and it hereby is, substituted for that contained in the initial decision:

It is ordered, That respondents Silf Skin, Inc., a corporation, and its officers, and George Lacks and Harold Lacks, individually and as officers of said corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of girdles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that said girdles are seamless.

It is further ordered, That the initial decision of the hearing examiner, as modified by the Commission, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents named herein 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 the order to cease and desist.

Commissioner Tait not participating.

Decision

IN THE MATTER OF
THE FIRESTONE TIRE & RUBBER COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7020. Complaint, Dec. 31, 1957—Decision, June 9, 1959

Order requiring a tire manufacturer to cease advertising falsely that its second-line tires were used by manufacturers of motor vehicles as original equipment.

A charge that respondent's tire names were deceptive was dismissed due to its costly abandonment of the practice and compliance with the Tire Advertising Guides issued to the industry after date of the complaint.

Mr. Michael J. Vitale for the Commission.

Gravelle, Whitlock & Markey, by *Mr. Thomas S. Markey*, of Washington, D.C., and *Mr. Joseph Thomas* and *Mr. Stanley M. Clark*, of Akron, Ohio, for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

1. Respondent, The Firestone Tire & Rubber Company, charged with having violated §5 of the Federal Trade Commission Act, is a corporation organized, existing and doing business under the laws of the State of Ohio, with its office and principal place of business located at 1200 Firestone Parkway, Akron, Ohio.

2. It is now, and for many years last past has been, engaged in the manufacture of motor vehicle tires and tubes, which it sells through dealers located in the various States of the United States, and in the District of Columbia. It causes said tires and tubes to be shipped from its factories, located in several States, to its dealers located in various other States of the United States, and in the District of Columbia. It maintains, and at all times mentioned herein has maintained, a course of trade in said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of trade in said commerce has been and is substantial.

3. At all times mentioned herein, respondent has been, and is now, in direct and substantial competition with other corporations, firms and individuals also engaged in the manufacture, sale and distribution of motor vehicle tires and tubes.

The "First Charge"