

IN THE MATTER OF
BECKER CLOAK COMPANY, INC.

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

Docket 4295. Complaint, Aug. 30, 1940—Decision, Nov. 29, 1940

Where a corporation engaged in manufacturing, among other things, women's textile fabric coats and other garments, and in selling and distributing said products to purchasers in various other States and in the District of Columbia—

- (a) Represented that its said textile fabric garments were made from the peltries of "Persian" lambs, young of Karakul breed of sheep, or were made from wool taken from the young of said breed of sheep, through referring to and designating its said textile fabric women's coats and other garments by name "Duro-Persian" and making use of and displaying said name on tags and labels attached to said garments, and through depiction, along with said words, of sheep or lambs upon some of such tags and labels (upon reverse of which were instructions for care of garment in question, outstanding feature of which was set forth as "beauty and likeness to a fur coat of the same type" with "wearing quality of the fabric * * * not GUARANTEED"), and through use of said designation in advertisements of its said garments in trade journals of interstate circulation, window display cards and other advertising matter, and further describing therein garments in question by use of words "Imported Persian" and by other words and phrases of like import and meaning, including pictorial designs of sheep or lamb, and through use in its said advertisements of large pictorial representations of garments in question which served further to emphasize resemblance thereof to Persian lamb fur;

Facts being textile fabric garments, thus labeled and advertised, were made of rayon and cotton, presence of which was not disclosed, through the twisting of former into a pile about a core of all cotton yarn, with appearance of silky, tightly curled fur, and thus close resemblance to Persian lamb fur, and products in question were not imported either from Persia or elsewhere, but were of domestic manufacture, and, as aforesaid, were not made of the wool of any animal, nor from the fur of Persian lambs obtained from the young of the Karakul breed of sheep, as long indicated to consuming public from words "Persian" and "Persian Lamb" in association with coats, cloaks or similar garments for women, and accepted as meaning or indicating peltries of the young of the Karakul breed of sheep originally found in Asia and marketed through Persian traders, and noted for their silky, tightly curled fur, and commanding high prices in the world's marts of trade and commerce, and preferred in coats, capes, or other garments made therefrom among discriminating women throughout the world;

With capacity and tendency, through use of such labels, tags, and advertising matter, to create impression in minds of purchasers and prospective purchasers of such textile fabric garments that same were made in whole or in part from the peltries of the young of the Karakul breed of sheep, or from the wool taken from such young, and that the materials from which they

were made were imported from Persia, and with effect of confusing, misleading, and deceiving substantial portion of purchasing public into belief that such representations were true, and, because of such erroneous and mistaken belief, thus engendered, of causing and inducing purchase by consuming public of substantial quantities of its said products; and

- (b) Placed in the hands of unscrupulous retailers, through furnishing such labels, tags, and advertising material to customers and causing same to be placed upon its said fabric garments for resale to members of purchasing public, means whereby such retailers might deceive and mislead members of purchasing public into erroneous belief that said textile fabric garments, made from rayon and cotton, were made in fact from peltries of the young of the Karakul breed of sheep or from wool taken from such young:

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.

Mr. Joseph C. Fehr, for the Commission.

Mr. Moses T. Barrows, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Becker Cloak Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Becker Cloak Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 247 West Thirty-seventh Street, in the city of New York, State of New York.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing among other things, women's textile fabric coats and other garments, in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of its said business the respondent causes said products, when sold, to be shipped from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such fabric coats in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 3. The words "Persian" and "Persian Lamb" when applied to, or used in association with, coats, cloaks, or similar garments for women, indicate to the consuming public, and are accepted as meaning or indicating, peltries of the young of the Karakul breed of sheep originally found in Russia and marketed through traders of Persia. Peltries truthfully designated as "Persian" or "Persian Lamb" are noted for their silky, tightly curled fur, and bring high prices in the world's marts of trade and commerce. There is a preference among discriminating women throughout the world for coats, cloaks, capes, or other garments made of "Persian Lamb."

PAR. 4. In the course and conduct of its business as aforesaid, respondent, in connection with the offering for sale and the sale of its textile fabric garments to wholesalers, jobbers, and retail dealers, and to the consuming public, refers to and designates its said textile fabric women's coats and other garments by the name "Duro-Persian." Respondent attaches to said textile fabric garments certain tags and labels, some of which bear upon their face pictorial designs of sheep or lambs and the aforesaid words "Duro-Persian." Respondent also advertises its said textile fabric garments by means of trade journals having interstate circulation, by window display cards and other advertising matter which describe, designate, and refer to said textile fabric garments as "Duro-Persian." Such advertising literature also describes such garments by the use of the words "Imported Persian" and other words and phrases of like import and meaning, including pictorial designs of sheep or lambs.

PAR. 5. In addition to the designation above set forth, the aforesaid textile fabric garments as manufactured and sold by respondent are so constructed as to have the appearance of the silky tightly curled and highly prized fur of the young of the Karakul breed of sheep, and from their appearance convey the impression and induce the belief among prospective purchasers that they are in fact made from, or are composed of, the peltries of "Persian" lambs, the young of such Karakul sheep or from the wool coming from such lambs. Respondent further employs in connection with the advertising and sale of its said textile fabric garments, large pictorial representations thereof, which serve further to emphasize the resemblance of said textile fabric garments to Persian lamb fur.

PAR. 6. In said ways and by said means, as set forth in paragraphs 4 and 5 hereof, the respondent represents, by the use of the words "Duro-Persian" independently and with the words "Imported Persian" or other words of like import and meaning, and by the use of pictorial designs of sheep or lambs and illustrations of said textile fabric garments, that said textile fabric garments so sold and distributed by it

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are made from the peltries of "Persian" lambs, the young of the Karakul breed of sheep, or are made from the wool taken from the young of the Karakul breed of sheep.

Respondent, by the use of such labels or tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, has created and creates the impression in the minds of the purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondent that said textile fabric garments are made in whole or in part from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep, and that the materials of which they are made are imported from Persia.

PAR. 7. In truth and in fact, the textile fabric garments so labeled and advertised by respondent, as aforesaid, are not made from the fur of Persian lambs or any other fur, nor are they made of a genuine fur fabric composed of wool obtained from the young of the Karakul breed of sheep, or the wool of any animal. Respondent's said fabric garments are, on the contrary, made of a textile material composed of rayon twisted into a pile about a core of all-cotton yarns having the appearance of silky, tightly curled fur, thus closely resembling Persian lamb fur. Said textile fabric garments, further, are not imported either from Persia or elsewhere, but are of domestic manufacture. Further, the labels, tags, and advertising material employed by respondents, as aforesaid, to describe, designate, or refer to its said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments.

PAR. 8. The use by respondent of the aforesaid representations employed in the sale of its said products in commerce as hereinabove described has the capacity and tendency to, and does, confuse, mislead, and deceive a substantial portion of the purchasing public into the belief that said representations are true, and because of such erroneous and mistaken belief so engendered, has caused and induced, and causes and induces, the purchase by the consuming public of substantial quantities of respondent's said products.

PAR. 9. Respondent further, by furnishing said false and misleading labels and tags and advertising material to customers and causing said labels and tags to be placed upon its said fabric garments for resale to members of the purchasing public, places and has placed in the hands of uninformed or unscrupulous retail dealers a means and instrumentality whereby they may deceive and mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton are made, in fact, from the

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peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 30th day of August 1940, issued and served its complaint in this proceeding upon respondent, Becker Cloak Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 18, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed for the respondent by its president, Morris Becker, and by W. T. Kelley, chief counsel, for the Federal Trade Commission, subject to the approval of the Commission, may be taken as to the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, such stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Becker Cloak Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 247 West 37th Street, in the city of New York, State of New York.

PAR. 2. The respondent is now, and for more than two years last past has been, engaged in the business of manufacturing, selling, and distributing among other things, women's textile fabric coats and other garments, in commerce between and among the various States of the United States and in the District of Columbia. In the conduct

of its said business the respondent causes said products, when sold, to be shipped from its 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in such fabric coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The words "Persian" and "Persian Lamb" when applied to, or used in association with, coats, cloaks, or similar garments for women, indicate to the consuming public, and are accepted as meaning or indicating, peltries of the young of the Karakul breed of sheep originally found in Russia and marketed through traders of Persia. Peltries truthfully designated as "Persian" or "Persian Lamb" are noted for their silky, tightly curled fur, and bring high prices in the world's marts of trade and commerce. There is a preference among discriminating women throughout the world for coats, cloaks, capes, or other garments made of "Persian Lamb."

PAR. 4. In the course and conduct of its business, as aforesaid, respondent, in connection with the offering for sale and the sale of its textile fabric garments to wholesalers, jobbers, and retail dealers, and to the consuming public, refers to and designates its said textile fabric women's coats and other garments by the name "Duro-Persian." Respondent attaches to said textile fabric garments certain tags and labels, some of which bear upon their face pictorial designs of sheep or lambs and the aforesaid words "Duro-Persian." Respondent also advertises its said textile fabric garments by means of trade journals having interstate circulation, by window display cards and other advertising matter which describe, designate, and refer to said textile fabric garments as "Duro-Persian." Such advertising literature also describes such garments by the use of the words "Imported Persian" and other words and phrases of like import and meaning, including pictorial designs of sheep or lambs.

PAR. 5. On the face of the tags referred to in Paragraph Four hereof appears the following printed matter:

ORIGINAL QUALITY
Exclusive DURO-PERSIAN Fashions
U. S. Pat. No. 354097
INSTRUCTIONS ON
REVERSE SIDE

On the reverse side of the tags referred to in paragraph 4 hereof appears the following printed matter:

The outstanding feature of this garment is the beauty and likeness to a fur coat of the same type. The wearing quality of the fabric in this coat is not

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GUARANTEED. In order that it may render the maximum of service, the following rules should be observed.

DON'T crush or fold when wet.

DON'T place on radiator or near heat.

RAISE coat when sitting down, as constant crushing may mark this material.

PAR. 6. The material which goes into the textile fabric garments made by respondent is not made by respondent but is purchased by it from another concern. The garments made from said textile fabric and sold by respondent are so constructed as to have the appearance of silky, tightly curled and highly priced fur of the young of the Karakul breed of sheep. By reason of their aforesaid appearance, said textile fabric garments have the capacity and tendency to convey the impression and induce the belief among prospective purchasers that they are in fact made from, or are composed of, the peltries of "Persian" lambs, the young of such Karakul sheep, or from the wool coming from such lambs. Respondent further employs in connection with the advertising and sale of its said textile fabric garments, large pictorial representations thereof, which serve further to emphasize the resemblance of said textile fabric garments to Persian lamb fur.

PAR. 7. In said ways and by said means, as set forth in the three preceding paragraphs hereof, the respondent represents, by the use of the words "Duro-Persian" independently and with the words "Imported Persian" or other words of like import and meaning, and by the use of pictorial designs of sheep or lambs and illustrations of said textile fabric garments, that said textile fabric garments so sold and distributed by it are made from the peltries of "Persian" lambs, the young of the Karakul breed of sheep, or are made from the wool taken from the young of the Karakul breed of sheep.

The use by respondent of the labels and tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, has the capacity and tendency to create the impression in the minds of purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondent that said textile fabric garments are made in whole or in part from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep, and that the materials of which they are made are imported from Persia.

PAR. 8. In truth and in fact, the textile fabric garments so labeled and advertised by respondent, as aforesaid, are not made from the fur of Persian lambs or any other fur, nor are they made of a genuine fur fabric composed of wool obtained from the young of the Karakul breed of sheep, or the wool of any animal. Respondent's said fabric garments are, on the contrary, made of a textile material composed

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of rayon twisted into a pile about a core of all-cotton yarns having the appearance of silky, tightly curled fur, thus closely resembling Persian lamb fur. Said textile fabric garments are not imported either from Persia or elsewhere, but are of domestic manufacture. Further, the labels, tags, and advertising material employed by respondent, as aforesaid, to describe, designate or refer to its said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments.

PAR. 9. The use by respondent of the aforesaid representations employed in the sale of its said products in commerce as hereinabove described, has the capacity and tendency to, and does, confuse, mislead, and deceive a substantial portion of the purchasing public into the belief that said representations are true, and because of such erroneous and mistaken belief so engendered, has caused and induced, and causes and induces, the purchase by the consuming public of substantial quantities of respondent's said products.

PAR. 10. Although not heretofore aware of it, respondent now admits that by furnishing the aforesaid labels and tags and advertising material to customers and causing said labels and tags to be placed upon its said fabric garments for resale to members of the purchasing public, it has placed in the hands of unscrupulous retail dealers a means and instrumentality whereby they may deceive and mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton are made, in fact, from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep.

CONCLUSION

The aforesaid acts and practices of respondent, Becker Cloak Co., Inc., a corporation, 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 provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve

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upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Becker Cloak Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of women's textile fabric garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Persian," or any term containing the word "Persian" to designate, describe or in any way refer to, textile fabric garments which simulate Persian lamb peltries in appearance.

2. Representing or implying in any manner that textile fabric garments are made from the peltries of Persian lambs, the young of the Karakul breed of sheep; or representing that such garments are made from wool taken from such lambs, when they are not made from such wool.

3. Representing in any manner that such garments are imported from Persia, or any other foreign country, or are made from imported materials, when they are not in fact so imported or made from imported materials.

4. Using any pictorial design of a sheep or lamb, or of any other wool-bearing animal, in connection with any description of, or reference to, textile fabric garments which are not made from the wool of the animal so depicted.

It is further ordered, That the respondent shall, within 60 days after the service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

JAMES R. KAYE, TRADING AS THE LO-WELL PENCIL
COMPANY AND THE LO-WELL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4318. Complaint, Sept. 17, 1940—Decision, Nov. 29, 1940*

Where an individual engaged in sale of pencils, carbon paper, and other merchandise, to purchasers in other States, and in also giving or selling premiums to his customers as an inducement for purchasing his products, and including among such premiums, which varied from time to time, various types of merchandise, including, among other things, novelty merchandise, fountain pens, pencil sharpeners, cameras, and electric razors; in offering such different premiums at different periods of time and in engaging in the practice of representing falsely, to induce purchase of pencils and carbon paper or other merchandise sold and distributed by him, quality, material, construction, durability and other characteristics of the various premiums offered to purchasers of his regular merchandise—

- (a) Represented, as typical of false statements and representations disseminated by circulars and other printed matter distributed and circulated by him among prospective customers in various States and in the District of Columbia, that certain fountain pens given or sold by him as premiums had points or nibs made of or covered with substance known as "iridium" and were of high quality, and that certain of them had pen points made or covered with substance known as "durium," through such statements or representations as "Genuine Iridium Nibs," "Fine Quality," and "Durium Pointed," facts being points of said pens were not tipped or covered with, or made of, some special alloy or special substance of unusual quality, giving them special writing quality and durability, as implied through use, as aforesaid, of word "Durium," nor tipped or covered with "Iridium," there is no metal or substance known to science or industry as "Durium," and pens in question were not of fine quality but, on the contrary, of a very low, cheap grade; and
- (b) Made a practice, as further typical of his methods in connection with operation of his business, of placing in circulars above described pictorial representations purporting to illustrate cameras offered as premiums, facts being cameras sent by him to customers were not of grade and quality pictured in said circulars, but were of inferior grade and quality to, and different from, those illustrated therein, both from standpoint of materials used and workmanship; and

Where said individual, in conducting his said business and in offering pencils or one of his regular items of merchandise—

- (c) Made such representations, as further typical of his methods and practices in conducting his said business, in describing such items in circulars above set forth, as "100% first quality in every respect," "New," "Better," "Outwears ordinary pencils," and "New record-breaking price reduction," facts being his said pencils were not in any respect comparable to those of