

Syllabus

IN THE MATTER OF
CARLTON MILLS CO., INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4341. Complaint, Oct. 9, 1940—Decision, Apr. 17, 1941*

Where a corporation engaged in manufacture of fabrics simulating various furs and wool materials, and in interstate sale and distribution thereof, and in supplying to garment manufacturers and retailers various labels to be attached to coats and other garments made from its said products—

- (a) Represented that its fabrics, made to resemble and simulate the color, pattern, and texture of genuine Persian lamb, Karakul and Caracul peltries, and the garments manufactured therefrom, were made from such peltries or from wool taken from such animals, through setting forth on various labels supplied as aforesaid, together with depictions of one or more lambs, trade names "Genuine Babelamm," "Karagora," "Peikara," "Bashkara Lamm," and "Kosva-Lam," and through setting forth on other labels names "Persian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl," "Russkara," "Kurl Kohvar," and "Galykurl";

When in fact said fabrics and garments were composed of various combinations of ordinary wool, cotton, and rayon and were not, as indicated, composed of the peltries of Persian lamb, Karakul or Caracul, nor of wool taken therefrom, coats or other garments of which are markedly preferred by a substantial portion of the purchasing public over those made from wool or wool mixture; and

- (b) Sold and distributed fabrics containing a substantial percentage of rayon, and supplied labels, as above indicated, to be attached to garments made therefrom, without disclosing presence of rayon, which chemically manufactured fiber or fabric, when so made as to simulate peltries aforesaid or wool thereof, is by the purchasing public practically indistinguishable therefrom, and is believed and accepted thereby as being such peltries or wool;

With result of placing in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means whereby they were enabled to mislead members of purchasing public, and with effect of deceiving a substantial portion of such public into the erroneous belief that its said products and garments manufactured therefrom were made from the peltries of certain animals or from wool taken therefrom, when such was not the fact, and of inducing said public, because of such mistaken belief, to purchase substantial quantities of its products:

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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Mr. I. Arnold Humber, of New York City, for respondent.

Complaint

32 F. T. C.

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 Carlton Mills Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Carlton Mills Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania and having its office, manufacturing plant, and principal place of business at 241 West Wyoming Avenue in the city of Philadelphia, State of Pennsylvania. Respondent also maintains a sales office at 51 Madison Avenue, in the city and State of New York.

PAR. 2. Respondent is now and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of certain fabrics which are designed to resemble or simulate in appearance various furs and wool materials. Respondent causes, and has caused, said products, when sold by it, to be transported from its place of business in the State of Pennsylvania to various purchasers thereof at their respective points of location in various States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its said fabrics in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies to manufacturers and retail dealers various labels to be attached to coats and other garments manufactured from its fabrics, such labels being transported from respondent's said place of business to manufacturers and dealers located in various States of the United States and in the District of Columbia. Among the trade names used by the respondent on said labels are the following: "Genuine Babe-lamm," "Karagora," "Pelkara," "Bashkara Lamm," "Kosva-Lamm." On the above labels the respondent also causes to be placed a picturization or figure of one or more lambs. Other labels used by respondent bear the names: "Persian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl,"

"Russkara," "Kurl Kohvar," and "Galykurl." All of said labels are used on fabrics which are so manufactured by respondent as to resemble and simulate in appearance the color, pattern and texture of genuine Persian Lamb, Karakul and Caracul peltries.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with Southeastern European and Southwestern Asiatic countries where the Persian Lamb, the Karakul and the Caracul are found. For example, "Basher" is the name of one of the Soviet Republics of Southeastern Russia, and "Kara" is the name of a boundary river flowing between certain parts of Europe and Asia. The word "laine" is the French word for wool.

When garments closely simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin, and which are unaccompanied by words disclosing that such garments are in fact made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from peltries or from the wool of such animals.

Through the use of the aforesaid labels, and through the use of other words of similar import and meaning not herein set out, the respondent represents and has represented that its fabrics and the garments made therefrom are made from the peltries of Persian lambs, Karakuls and Caraculs, or from wool taken from such animals.

PAR. 4. The foregoing labels are false and misleading. In truth and in fact none of respondent's products nor the garments made therefrom are composed of the peltries of Persian lambs, Karakuls or Caraculs, nor of wool taken from such animals. All of said products are fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of Persian lambs, Karakuls or Caraculs, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

PAR. 6. A further practice on the part of respondent is the sale and distribution of fabrics containing a substantial percentage of rayon, and the supplying of labels as aforesaid to be attached to garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Findings

32 F. T. C

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate the peltry or wool of the Persian lamb, the Karakul and the Caracul, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities rayon, when so manufactured as to simulate the peltries or wool of such animals, and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool taken from such animals.

PAR. 7. Through the use of the acts and practices herein set forth, the respondent also places in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The use by the respondent of the aforesaid acts and practices has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products and the garments manufactured therefrom are made from the peltries of certain animals or from wool taken from such animals, when such is not the fact. Because of such erroneous and mistaken belief, the purchasing public has been induced to and has purchased substantial quantities of respondent's products.

PAR. 9. The aforesaid acts and practices of 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 October 9, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Carlton Mills 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. The matter was set down for hearing and in the course of such hearing a stipulation as to the facts was entered into between Robert Mathis, Jr., attorney for the Commission, and I. Arnold Himber, attorney for the respondent, and such stipulation as to the facts was read into the record. The record,

which includes the stipulation as to the facts in the case, was duly filed in the office of the Commission. The respondent expressly agreed that the Commission may proceed 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. The respondent further expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, respondent's answer, and upon the record, including said stipulation as to the facts; 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, Carlton Mills Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania and having its office, manufacturing plant, and principal place of business at 241 West Wyoming Avenue in the city of Philadelphia, State of Pennsylvania. Respondent also maintains a sales office at 51 Madison Avenue in the city and State of New York.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of certain fabrics which are designed to resemble or simulate in appearance various furs and wool materials. Respondent causes, and has caused, said products, when sold by it, to be transported from its place of business in the State of Pennsylvania to various purchasers thereof at their respective points of location in various States of the United States other than the State of Pennsylvania, and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its fabrics, respondent supplies to garment manufacturers and retail dealers, various labels to be attached to coats and other garments manufactured from its fabrics, such labels being transported from respondent's said place of business to manufacturers and dealers located in the various States of the United States and in the District of Columbia. Among the trade names used by the respondent on said labels are the following: "Genuine Babelamm," "Karagora," "Pelkara," "Bashkara Lamm,"

Findings

32 F. T. C.

and "Kosva-Lam." On the above labels, the respondent also causes to be placed a picturization or figure of one or more lambs. Other labels used by respondent bear the names "Persian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Aristo Kurl," "Russkara," "Kurl Kohvar," and "Galykurl." All of said labels are used on fabrics which are so manufactured by respondent as to resemble and simulate in appearance the color, pattern and texture of genuine Persian lamb, Karakul and Caracul peltries.

The foregoing trade names have the sound and appearance of various names which are associated in the minds of the purchasing public with Southeastern European and Southwestern Asiatic countries where the Persian lamb, the Karakul and the Caracul are found; for example, "Basher" is the name of one of the Soviet republics of Southeastern Russia and "Kara" is the name of a boundary river flowing between certain parts of Europe and Asia. The word "laine" is the French word for wool.

PAR. 4. The Commission finds that when garments closely simulating or resembling the peltries of animals bear labels which suggest such animals or the country of their origin and which do not adequately disclose that such garments are, in fact, made of fabrics rather than peltries, such practice has the tendency and capacity to confuse, mislead and deceive the purchasing public into the belief that such garments are made from peltries or from the wool of such animals.

Through the use of the aforesaid labels and through the use of other words of similar import and meaning, the respondent represents, and has represented, that its fabrics and the garments made therefrom are made from the peltries of Persian lambs, Karakuls or Caraculs, or from wool taken from such animals.

PAR. 5. In truth and in fact, none of respondent's products nor the garments made therefrom are composed of the peltries of Persian lambs, Karakuls or Caraculs, nor of wool taken from such animals. All of said products are fabrics composed of ordinary wool and cotton, or ordinary wool and rayon, or cotton and rayon, or various combinations of wool, cotton and rayon.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of Persian lambs, Karakuls or Caraculs and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

1207

Order

PAR. 7. A further practice on the part of respondent is the sale and distribution of fabrics containing a substantial percentage of rayon, and the supplying of labels as aforesaid to be attached to garments made from such fabrics, without disclosing the rayon content of such fabrics and garments.

Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate the peltries or wool of the Persian lamb, the Karakul and the Caracul, and when so manufactured, rayon has the appearance of peltries or wool taken from such animals and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities, rayon, when so manufactured as to simulate the peltries or wool of such animals and not designated as rayon, is believed and accepted by the purchasing public to be the peltries of such animals or wool taken from such animals.

PAR. 8. The Commission finds that through the use of the practices herein found, the respondent also places in the hands of uninformed and unscrupulous manufacturers, jobbers, and retail dealers a means and instrumentality whereby such manufacturers, jobbers, and retail dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 9. The use by the respondent of the aforesaid acts and practices has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's products and the garments manufactured therefrom are made from the peltries of certain animals or from wool taken from such animals when such is not the fact. Because of such erroneous and mistaken belief the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product.

CONCLUSION

The aforesaid acts and practices of respondent 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 complaint of the Commission, the answer of respondent

ent, and upon a stipulation as to the facts entered into between Robert Mathis, Jr., attorney for the Commission, and I. Arnold Himber, attorney for the respondent, and read into and made a part of the record herein, and the Commission, having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

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

1. Using the words "Persian" or "Pershian" or any other words of similar spelling or phonetic sound to designate, describe, or in any way refer to any textile fabric which resembles or simulates in appearance, pattern, or design the peltry of a Persian Lamb, Karakul or Caracul.

2. Using or authorizing the use of the terms "Karagora," "Pelkara," "Bashkara Lamm," or "Kosva-Lam," separately or together with a pictorial design of a lamb or of any other wool-bearing animal, in connection with any description of or reference to any textile fabric which resembles or simulates in appearance, pattern or design the peltry of a Persian Lamb, Karakul or Caracul.

3. Using or authorizing the use of the terms "Pershian Royal," "Rivalamm," "Volgalam," "Persia-laine," "Lam Kurl Persian," "Russkara," "Kurl Kohvar," or "Galykurl" in connection with any description of or reference to any textile fabric which resembles or simulates in appearance, pattern or design the peltry of a Persian Lamb, Karakul or Caracul.

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

5. Representing or implying in any manner that respondent's textile fabrics which resemble or simulate in appearance, pattern, or design the peltries of Persian Lambs, are made from the peltries of Persian Lamb, 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.

6. Using the terms "Babelamm," "Lam," or "Lamm" or any other term or terms of similar import or meaning to in any way describe, designate or refer to any fabric or product which is not composed

1207

Order

of wool obtained from lambs; provided, however, that in the case of fabrics or products composed in part of such wool and in part of other fibers, such terms may be used as descriptive of the wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof.

7. Advertising, offering for sale, or selling fabrics, or products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon; and when such fabrics or products are composed in part of rayon and in part of other fibers or material, all of such fibers or materials, including the rayon, shall be set forth in immediate connection with each other in letters of at least equal size and conspicuousness and shall truthfully describe and designate each constituent fiber or material thereof.

8. Supplying to others any labels or advertising material containing any of the representations prohibited herein.

It is further ordered, That the respondent shall within 60 days after 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.

It is further ordered, That no provisions contained in this order shall be construed as authorizing or permitting, after July 14, 1941, the labeling of any wool product in any manner other than in strict conformity with the provisions of the "Wool Products Labeling Act of 1939."

IN THE MATTER OF
PASCAL 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 3768. Complaint, Apr. 19, 1939—Decision, Apr. 19, 1941

Where a corporation engaged in manufacture, and in substantial competitive interstate sale and distribution of its "Breatheasy" treatment, consisting of "Breatheasy" liquid medicinal preparation and atomizer or so-called "Nebulizer" for use in administering same, packed in small pasteboard box for offer and sale principally through drug stores—

- (a) Represented, for a time, through advertising pamphlets circulated through the mail and by distributors, that its said "Breatheasy" was a remedy or cure for chronic bronchitis, heart disease and cardiac distress, gastric ulcer, serum rash, urticaria (hives), and other skin diseases of the erythematous and eczematous types, inflammation of the nose, throat, tonsils, larynx, and lungs, and neuralgia and neuritis, notwithstanding fact it was neither a remedy nor a competent treatment for said ailments, but, by reason of its epinephrine content, would be definitely harmful if used by a person suffering from high blood pressure, toxic goiter, diabetes or heart disease; and
- (b) Represented thereafter, through advertisements in newspapers and magazines and other media, and through circular form letters, that said "Breatheasy" was a treatment for asthma and hay fever, and also, in said circular letters, for kindred ailments, and in small booklet included in package containing its preparation and device, that said product was recommended also for "other allergic conditions of the skin, such as eczema, urticarias, and rashes of similar nature," and that regular use thereof several times a day would tend to clear up those conditions and often make them disappear even when they had been present for years, notwithstanding fact said product did not constitute an effective treatment for chronic bronchitis or for urticaria or skin diseases of the erythematous and eczematous types; and
- (c) Failed to set forth in its advertising literature other than in booklet aforesaid, and in its labels, facts material thereto through warning or notice that use thereof would be harmful if user was suffering from high blood pressure, toxic goiter, diabetes, or heart disease, and in its said booklet, not seen by prospect until after purchase had been made and package opened, only inadequately revealed such facts in inconspicuous statement on one of inside pages;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that its said representations were true, and that said preparation had therapeutic values represented, and into purchase of substantial quantities of its said product on account of such beliefs, thus induced, and with result that substantial trade was diverted unfairly to it from its competitors who do not misrepresent the therapeutic value of their products:

Held, That such representations and its acts and practices in relation thereto prior to amendment of Federal Trade Commission Act on March 21, 1938,