

Syllabus

IN THE MATTER OF

SOMERSVILLE MANUFACTURING COMPANY, AND J. J.
O'DONNELL AND CLINTON ELLIS, TRADING AS O'DON-
NELL AND ELLISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4324. Complaint, Sept. 27, 1940—Decision, Apr. 19, 1941*

Where a corporation engaged in manufacture and interstate sale and distribution of various fabrics, and two individuals engaged as its selling agents in soliciting and filling orders from manufacturers of coats and other garments and in supplying to purchasers of said fabrics certain labels, as hereinafter described, furnished by said corporation and attached to garments in question when they were displayed and sold to retailers and purchasing public—

- (a) Represented that their fabrics and garments made therefrom were composed entirely of fiber made from camel hair, through labels containing such legends, along with and preceding words "SOMERSVILLE FABRIC," as "GENUINE CAMEL'S HAIR," "CAMEL'S HAIR," and "KING CAMEL," together with depiction, in case of last, of camel and palm trees, notwithstanding fact none of said fabrics were made entirely from camel hair, but contained substantial percentages of wool, mohair and other fibers, and best cloth made by it in its mills and designated by it as "genuine camel hair" had never been made with more than 85 to 90 percent of said content, with balance of wool and other fibers; and
- (b) Made use, also, on fabric generally containing 50 percent camel hair, 25 percent kid mohair and 25 percent wool of label featuring, in large script letters, words "CAMEL'S HAIR" and also setting forth, in much smaller, less conspicuous type, which would be entirely overlooked by many purchasers, words "Kid Mohair & Wool";

With effect of placing in the hands of uninformed or unscrupulous manufacturers or retail dealers a means and instrumentality whereby they were enabled to deceive and mislead members of the purchasing public by representing garments made from such fabrics and bearing such labels as being made entirely of camel hair, long possessed of high repute for warmth, lightness and other superior qualities and therefore decidedly preferred by substantial portion of purchasing public, and of similarly misleading and deceiving a substantial number of manufacturers and dealers and members of purchasing public, whereby they were respectively induced to and did purchase substantial quantities of said products and garments made therefrom:

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.

Schatz & Schatz, of Hartford, Conn., for respondents.

Complaint

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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 Somersville Manufacturing Co., a corporation, and J. J. O'Donnell and Clinton Ellis, individuals trading as O'Donnell and Ellis, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Somersville Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and having its principal place of business at Somersville, Conn. The respondents, J. J. O'Donnell and Clinton Ellis, are individuals trading as O'Donnell and Ellis, and having their principal place of business at 450 Seventh Avenue, in the city and State of New York.

PAR. 2. The respondent Somersville Manufacturing Co. is now and for more than 2 years last past has been engaged in the business of manufacturing, selling, and distributing various fabrics. Said respondent causes its said products, when sold, to be transported from its said place of business, or from the place of the origin of the shipment thereof, to the purchasers thereof at their respective points or location in various States of the United States other than the State of Connecticut and other than the State of origin of the shipment thereof. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States.

The respondents O'Donnell and Ellis are selling agents for respondent Somersville Manufacturing Co., and are now and for more than 2 years last past have been engaged in the business of soliciting and filling orders from various manufacturers of coats and other garments for said fabrics manufactured by respondent Somersville Manufacturing Co. as aforesaid. Said respondents O'Donnell and Ellis cause said fabrics, and certain labels hereinafter referred to, when sold, to be transported from their said place of business in the State of New York, or from the place of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York, and other than the State of origin of the shipment,

thereof. Said respondents maintain, and at all times mentioned herein have maintained a course of trade in said fabrics, and in said labels, in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, and for the purpose of promoting the sale of their said fabrics, the respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their fabrics are made. Said false representations are made by means of labels supplied by the respondents to purchasers of their fabrics who are engaged in the manufacture of coats and other garments, such labels being supplied in order that they may be attached by such manufacturers to the coats and other garments made by them from respondents' fabrics. The labels so supplied are in fact attached to the coats and other garments so manufactured from said fabrics, and are in such coats and other garments when such products are displayed and sold to retail dealers and the purchasing public.

Among and typical of the labels so supplied by respondents and affixed to such coats and other garments are the following:

- (1) GENUINE CAMEL'S HAIR SOMERSVILLE FABRIC
- (2) CAMEL'S HAIR SOMERSVILLE FABRIC
- (3) KING CAMEL SOMERSVILLE FABRIC

In the last foregoing label the words "King Camel" are followed by a pictorial representation of a camel and some palm trees.

Through the use of said labels respondents represent that said fabrics and the garments manufactured therefrom are composed entirely of fiber made from camel's hair.

PAR. 4. The aforesaid representations are false and misleading. In truth and in fact, none of said fabrics bearing the above labels are made entirely from camel's hair, but all of said fabrics contain substantial percentages of wool, mohair, or other matreial.

PAR. 5. For many years garments made entirely from camel's hair have enjoyed a favorable reputation for warmth, lightness of weight and other superior qualities, and because of such reputation there is a decided preference on the part of a substantial portion of the purchasing public for garments made from such material.

PAR. 6. The aforesaid practice on the part of respondents serves also to place in the hands of uninformed or unscrupulous manufacturers and retail dealers a means and instrumentality whereby they are enabled to deceive and mislead members of the purchasing public

by representing garments made from such fabric and bearing such labels as being made entirely of camel's hair.

PAR. 7. The acts and practices of the respondents as herein set forth have the tendency and capacity to, and do, mislead and deceive a substantial number of manufacturers, dealers and members of the purchasing public into the belief that certain of respondents' products and the garments made therefrom are composed of certain designated fibers or materials, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, such manufacturers, dealers and members of the purchasing public have been induced to, and have, purchased substantial quantities of respondents' products and of the garments made from such products.

PAR. 8. The aforesaid acts and practices of the respondents 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 September 27, 1940, issued and subsequently served its complaint in this proceeding upon respondents, Somersville Manufacturing Co., a corporation, and J. J. O'Donnell and Clinton Ellis, individually and trading as O'Donnell and Ellis, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, the respondents not being represented by counsel but appearing in person before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence (brief in support of the complaint, respondents' brief, oral argument, report upon the evidence by the trial examiner and all other intervening procedure having been expressly waived by respondents); and the Commission having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public

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Findings

and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Somersville Manufacturing Co. is a corporation organized and existing under and by virtue of the laws of the State of Connecticut and having its principal place of business at Somersville, Conn. The respondents J. J. O'Donnell and Clinton Ellis are individuals trading as O'Donnell and Ellis and having their principal place of business at 450 Seventh Avenue in the city and State of New York.

PAR. 2. The respondent Somersville Manufacturing Co. is now, and for more than two years last past has been, engaged in the business of manufacturing, selling, and distributing various fabrics. Said respondent causes its said products, when sold, to be transported from its said place of business, or from the place of the origin of the shipment thereof, to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Connecticut and other than the State of origin of the shipment thereof. Said respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States.

The respondents O'Donnell and Ellis are selling agents for respondent Somersville Manufacturing Co. and are now, and for more than two years last past have been, engaged in the business of soliciting and filling orders from various manufacturers of coats and other garments for said fabrics manufactured by respondent Somersville Manufacturing Co. Said respondents O'Donnell and Ellis cause said fabrics, and certain labels hereinafter referred to, when sold, to be transported from their said place of business in the State of New York, or from the place of origin of the shipment thereof, to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and other than the State of origin of the shipment thereof. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said fabrics, and in said labels, in commerce among and between the various States of the United States. The labels referred to above are furnished to respondents O'Donnell and Ellis by respondent Somersville Manufacturing Co. to be used and distributed as described herein and are paid for by respondent Somersville Manufacturing Co.

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PAR. 3. In the course and conduct of their business and for the purpose of promoting the sale of their fabrics, the respondents have engaged in the practice of falsely representing the constituent fibers or materials of which certain of their fabrics are made. These false representations are made by means of labels supplied by the respondents to purchasers of their fabrics who are engaged in the manufacture of coats and other garments, such labels being supplied in order that they may be attached by such manufacturers to the coats and other garments made by them from respondents' fabrics. The labels so supplied are in fact attached to the coats and other garments so manufactured from said fabrics, and are in such coats and other garments when such products are displayed and sold to retail dealers and to the purchasing public.

Among and typical of the labels so supplied by respondents and affixed to such coats and other garments are the following:

GENUINE CAMEL'S HAIR
SOMERSVILLE FABRIC

CAMEL'S HAIR
SOMERSVILLE FABRIC

KING CAMEL
SOMERSVILLE FABRIC

In the last foregoing label the words "King Camel" are followed by a pictorial representation of a camel and some palm trees.

Through the use of these labels, the respondents represent that the fabrics so designated and the garments manufactured therefrom are composed entirely of fiber made from camel hair.

PAR. 4. In truth and in fact, none of the fabrics bearing the above labels are made entirely from camel hair, but all of them contain substantial percentages of wool, mohair, and other fibers.

The Commission finds that the respondent Somersville Manufacturing Co. has at all times used in its manufacturing processes a combination of wool, kid mohair and camel hair in the manufacture of the different fabrics which it produces and designates as camel hair. The best cloth manufactured by respondent Somersville Manufacturing Co. in its mills and designated by it as "genuine camel hair" has never been made with more than 85 percent to 90 percent camel-hair content, the balance of the product being wool and other fibers.

Respondents in addition to the labels quoted herein have used the following label on their products:

CAMEL'S HAIR
Somersville Fabric Kid Mohair & Wool

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In the label quoted immediately above the words "Camel's Hair" are in large script letters, prominently displayed, and the words "Kid Mohair & Wool" are in much smaller, less conspicuous type which would be entirely overlooked by many purchasers. The product on which this label was used generally contained the following fiber percentages: 50 percent camel hair, 25 percent kid mohair, and 25 percent wool.

PAR. 5. For many years garments made entirely from camel hair have enjoyed a favorable reputation for warmth, lightness of weight and other superior qualities, and because of such reputation there is a decided preference on the part of a substantial portion of the purchasing public for garments made from such material.

PAR. 6. The aforesaid practices on the part of the respondents serve also to place in the hands of uninformed or unscrupulous manufacturers or retail dealers a means and instrumentality whereby they are enabled to deceive and mislead members of the purchasing public by representing garments made from such fabrics and bearing such labels as being made entirely of camel hair.

PAR. 7. The acts and practices of the respondents as herein found have the tendency and capacity to, and do, mislead and deceive a substantial number of manufacturers, dealers and members of the purchasing public into the belief that certain of respondents' products and the garments made therefrom are composed of certain designated fibers or materials when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, such manufacturers, dealers, and members of the purchasing public have been induced to purchase, and have purchased, substantial quantities of respondents' products and of the garments made from such products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence introduced in support of the allegations of said complaint by Robert Mathis, Jr., counsel for the

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Commission and in opposition thereto by the respondents appearing in their own behalf, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Somersville Manufacturing Co., a corporation, its officers, directors, representatives, agents, and employees, and respondents J. J. O'Donnell and Clinton Ellis, individually and trading as O'Donnell and Ellis, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their 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 "camel's hair" or "camel" or any other term or terms descriptive of camel's hair on labels, or otherwise, to describe, designate or refer to any fabric or product which is not composed wholly of camel's hair; provided, however, that in the case of fabrics or products composed in part of camel's hair and in part of other fibers, such terms may be used as descriptive of the camel's-hair 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 thereof.

2. Using any pictorial design of a camel in connection with any description of or reference to fabrics or products in which camel's hair is not the predominating fiber.

3. Representing in any manner that fabrics or products offered for sale or sold by respondents contain camel's hair in greater quantity than is actually the case.

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

Complaint

IN THE MATTER OF

SHERRY'S CUT RATE DRUG 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 4345. Complaint, Oct. 10, 1940—Decision, Apr. 19, 1941

Where a corporation engaged in interstate sale and distribution of a drug preparation designated as "Mrs. Bee Femo Caps"; by advertisements of its said products disseminated through the mails, newspaper advertisements and other advertising literature—

- (a) Represented, directly and by implication, that its said preparation constituted a competent and effective treatment for delayed menstruation, that there was no risk in its use, and that it did not cause the user discomfort or inconvenience, and that it was harmless and effective in obstinate, unnatural and suppressed cases of aforesaid condition;

Facts being it was not a competent and effective treatment for such condition, and was not safe or harmless, in that it contained certain drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and, thus used, might result in gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in the case of pregnancy, might cause uterine infection and blood poisoning or other serious injury; and

- (b) Failed to reveal facts material in the light of the representations contained in said advertisements, and that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might result in serious injury to health;

With capacity and tendency, through use of such false, misleading, and deceptive representations, to mislead and deceive substantial portion of purchasing public into the erroneous and mistaken belief that its said preparation was a safe, harmless, competent and effective treatment for delayed menstruation, and with result, because of such mistaken belief, of inducing such public to purchase its said preparation:

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. William L. Taggart for the Commission.

Mr. A. J. Lubliner, of Bluefield, W. Va., 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 Sherry's Cut Rate Drug Co., Inc., a corporation, hereinafter referred to as respondent,