

Syllabus

IN THE MATTER OF

OLD COLONY KNITTING MILLS, INC., ET AL.

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

Docket 4236. Complaint, Aug. 14, 1940—Decision, Jan. 27, 1942

Where a corporation engaged in the manufacture and interstate sale and distribution of knitted goods—

- (a) Marked and labeled certain men's and women's sweaters as "Made of Imported Scotch-Shetland," etc., and as " * * * real Shetland Wool," relying in case of former upon representations made to it by seller of yarn it used therein, and discontinuing latter label after discussion with representatives of such concern; and

Where a corporate manufacturer of yarns—

- (b) Labeled aforesaid yarns sold by it to knitted goods manufacturer above described as "Shetland B" and "Shetland F," and invoiced them to purchasers as "Shetland Blend B," "Shetland B," and "Shetland F";

Notwithstanding the fact such yarns and sweaters made therefrom were composed, in accordance with said letters "B" and "F," of about 75 percent English Hogget wool and 25 percent China Lamb wool, or of about 50 percent English Hogget wool, 40 percent Australian wool and 10 percent Kid Mohair, respectively, and did not contain, as long understood from word "Shetland," wool made of, or product made from wool of, that breed known as Shetland sheep grown on Shetland Islands or contiguous mainland of Scotland, which had become well known to purchasing public by reason of certain definite characteristics and for which there had developed a consumer preference over products known to be made from the simulated Shetland, which even experts found it very difficult, if not impossible, to distinguish from the genuine, more costly, and quite limited Shetland;

With effect of misleading and deceiving purchasers and prospective purchasers into the mistaken belief that the products thus labeled were made of genuine Shetland wool, of which in fact they contained none:

Held, That such acts and practices were all to the prejudice of the public, and constituted unfair acts and practices in commerce.

As respects present significance of word "Shetland" applied to wool or wool products, which has long meant the wool of, or made from the wool of, a breed of sheep known as Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, with certain well known characteristics and which has come to enjoy a consumer preference for certain uses: notwithstanding efforts to induce the wool trade and purchasing public to accept the view that the term signifies only a type of wool or wool product having the distinctive characteristics of the real and more expensive Shetland wool, regardless of its source, such significance still represents the understanding and belief of a substantial portion of the trade in question and purchasing public.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

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Mr. Donovan Divet for the Commission.

Kaplan & Linsky and *Mr. Samuel P. Kaplan*, of Boston, Mass., for Old Colony Knitting Mills, Inc.

Root, Clark, Buckner & Ballantine, of Washington, D. C., for Maine Spinning Co.

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 Old Colony Knitting Mills, Inc., a corporation, and Maine Spinning Co., a corporation, hereinafter referred to as the 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, Old Colony Knitting Mills, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, having its office and principal place of business at 222 North Street, Hingham, Mass. Respondent, Maine Spinning Co., is a corporation, organized and existing under and by virtue of the laws of the State of Maine, having its office and principal place of business at Skowhegan, Maine.

PAR. 2. Respondent, Maine Spinning Co., is now, and for several years last past, has been, engaged in the business of manufacturing, selling and distributing yarns. Respondent, Old Colony Knitting Mills, Inc., is now, and for several years last past has been, engaged in the business of manufacturing, selling, and distributing sweaters. The respondents sell their respective products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and cause said products, when sold, to be transported from their respective places of business, or from the place of origin of the shipments thereof, to purchasers thereof at their respective points of location in various States of the United States other than the States of Maine and Massachusetts and other than the States of the origin of said shipments. Respondents maintain, and at all times mentioned herein, have maintained, a course of trade in their respective products 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 their respective businesses, for the purpose of promoting the sale of their respective products, the respondents have each engaged in the practice of falsely representing the constituent fiber or material as well as the source of the fiber or material of which their said products are made. Said false represen-

tations are made by respondent, Old Colony Knitting Mills, Inc., by means of labels attached to its said products. Said false representations are made by respondent, Maine Spinning Co., by means of letters, invoices, and other printed and written material circulated among purchasers.

PAR. 4. The word "Shetland" when applied to wool or garments, for many years has had, and still has in the minds of the purchasing and consuming public generally, a definite and specific meaning, to wit, wool which comes from a breed of sheep known as Shetland sheep, raised on the Shetland Islands, and on the contiguous mainland of Scotland. For many years there has been a preference on the part of a substantial number of the purchasing public for Shetland wool and yarn and fabrics made thereof.

PAR. 5. Among the products sold and distributed by respondent, Maine Spinning Co., as aforesaid, are certain yarns which it has described as "Shetland Blend B," "Shetland B," "Shetland F," and as "Shetland type yarns," and which it has represented as being made of stock imported from the British Isles. By the use of said statements and representations said respondent has represented and does now represent that said yarns are made of material imported from the British Isles, and are made in whole or in part of genuine Shetland wool.

Among those to whom said statements and representations are made and have been made by said respondent, Maine Spinning Co., as aforesaid, is respondent, Old Colony Knitting Mills, Inc. Said statements and representations are and have been made to said respondent in connection with the sale to it by respondent, Maine Spinning Co., of certain yarn which said Old Colony Knitting Mills, Inc., has used and does now use in the manufacture of the sweaters manufactured, sold, and distributed by it and labeled as hereinafter alleged.

Among the products manufactured, sold and distributed by respondent, Old Colony Knitting Mills, Inc., are certain sweaters manufactured by it from yarn purchased from respondent, Maine Spinning Co., which respondent Old Colony Knitting Mills, Inc., has variously labeled "Made of Imported Scotch-Shetland by Old Colony" and "Real Shetland Wool," as indicated by respondent, Maine Spinning Co., in selling said yarn to respondent, Old Colony Knitting Mills, Inc., thereby representing in the one case that said sweaters are manufactured from imported yarns made of a blend of Scotch wool and Shetland wool, and in the other case that they are manufactured from yarn made of genuine Shetland wool.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact the yarns sold and distributed by respondent, Maine Spinning Co., as aforesaid, are not made of material imported

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from the British Isles, and are not made from genuine Shetland wool either in whole or in part. Said sweaters sold and distributed by respondent, Old Colony Knitting Mills, Inc., are not manufactured from Scotch and Shetland wool, nor do they contain either of said wools.

PAR. 7. The use by the respondents of the aforesaid methods of labeling and representing their respective products has had, and has, the tendency and capacity to, and does, mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true, and to induce them to purchase respondents' said products.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice 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 August 14, 1940, issued and subsequently served its complaint upon respondents, Old Colony Knitting Mills, Inc., a corporation, and Maine Spinning Co., a corporation, charging them with violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral argument by counsel; and the Commission, having duly considered the matter 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, Old Colony Knitting Mills, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal place of business at 222 North Street, Hingham, Mass. It is engaged in the manufacture,

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sale, and distribution of knitted goods, including men's and women's knitted sweaters.

Respondent, Maine Spinning Co., is a corporation, having its office and principal place of business at Skowhegan, Maine. It is engaged in the manufacture, sale, and distribution of yarn.

PAR. 2. In the course and conduct of their aforesaid businesses respondents sell their respective products to purchasers situated in various States of the United States and cause said products, when sold, to be transported from their respective places of business, or from the place of origin of the shipments thereof, to purchasers in various States of the United States other than the States of Maine and Massachusetts and other than the States of origin of said shipments.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their respective products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Among the products sold and distributed by respondent, Maine Spinning Co., as aforesaid, are certain yarns which it has labeled as "Shetland B" and "Shetland F" and which it has invoiced to purchasers as "Shetland Blend B," "Shetland B," and "Shetland F." The letters "B" and "F" are used as private marks by respondent, Maine Spinning Co., to indicate the composition of the particular yarn. "Shetland Blend B" and "Shetland B" are identical in composition and consist of about 75 percent English Hogget wool and 25 percent China lamb wool. "Shetland F" consists of about 50 percent English Hogget wool, 40 percent Australian wool, and 10 percent kid mohair. These yarns did not, and do not, contain any wool from Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland.

Respondent, Old Colony Knitting Mills, Inc., purchased from respondent, Maine Spinning Co., yarns marked and invoiced as aforesaid, and used such yarns in the manufacture of sweaters which it sold and distributed. The sweaters so manufactured were marked and labeled by respondent, Old Colony Knitting Mills, Inc., as:

Made of Imported
SCOTCH-SHETLAND
by Old Colony

and as

"Colony Club Sweater
Real Shetland Wool
Made Expressly for
SAKS at 34th Street

Respondent, Old Colony Knitting Mills, Inc., relied upon representations made by respondent, Maine Spinning Co., as to the nature of the

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yarn in question in labeling certain of its products made from such yarn as "Made of Imported Scotch Shetland," but after discussion with representatives of the Maine Spinning Co. discontinued the use of its labeling of "Real Shetland Wool."

PAR. 4. The word "Shetland," when applied to wool or wool products, has for a great many years meant the wool of, or made from the wool of, a breed of sheep known as Shetland sheep, grown on the Shetland Islands or the contiguous mainland of Scotland. This wool and products made therefrom, because of certain definite characteristics of the wool, became well known to the purchasing public, and for certain uses a consumer preference therefor developed. The amount of Shetland wool available annually has been, and is, quite limited. It can, however, be so closely simulated by mixtures of wools grown in other portions of the world that even experts in the wool trade find it very difficult, if not impossible, to distinguish such mixtures simulating Shetland wool from genuine Shetland wool.

Wool products made from Shetland wool, as well as products made from simulated Shetland wool, have been, and are being, sold and distributed in the United States. Wool products made from Shetland wool command a higher price than similar products which are known to be made from simulated Shetland wool, and there is a preference on the part of members of the purchasing public for products made of genuine Shetland wool. It is usual in the trade, when there is doubt as to the kind of yarn contained in a sweater or other knitted product, to call upon the knitter for invoices of the yarn used in making the sweater or other knitted product.

There have been efforts to induce the wool trade and the purchasing public to accept the view that the term "Shetland" signifies only a type of wool or wool product having the distinctive characteristics of real Shetland wool regardless of the source or origin of the wool. For example, a large manufacturer of yarn advertised in a trade journal under date of September 23, 1938, in the form of "An open letter to the industry about Shetlands" in part as follows:

There are some facts about Shetlands which you should know if you are using this yarn or contemplate using it. Unlike Cashmeres and Angoras, Shetland is not clipped nor plucked from an animal bearing the name of Shetland. Instead Shetland is a blend of fibres deriving its name from sweaters knitted by women over a quarter of a century ago on the Shetland Isles. It is the characteristics of Shetland rather than an animal that gives Shetland yarn its name.

* * * * *

P. S. Years of patient experimentation are back of our successful Shetland. We made our first sample on October 30th, 1936.

The president of the company, which published the above advertisement, testified that some of his customers believed that Shetland yarn was made of wool from Shetland sheep and he wanted to be sure that none of his customers would think that the yarn which he was selling was made from the wool of Shetland sheep.

In October 1939, the Associated Wool Industries, having its office in New York City, published a glossary of wool and wool fabric terms intended as a guide for retail clerks and others. The statement as to the term "Shetland" contained in this publication is:

Originally fabric woven from the wool of the sheep in the Shetland Islands distinguished for its hairy nature, and fine but strong fiber. The term is now applied to fabrics made of wool of like characteristics. Shetlands are soft and a bit "mushy." The herringbone weave is common in shetland fabrics but the term "shetland" described the type of wool and not the weave.

PAR. 5. Some members of the wool trade assert that the word "Shetland," as applied to wool or products made therefrom, no longer signifies any specific geographic origin or definite source of the wool, but merely means that the wool is of a type having the appearance and characteristics of real Shetland wool. Similarly, to some members of the purchasing public the term "Shetland" signifies merely wool or wool products having the appearance and characteristics which they associate with the term "Shetland," and does not indicate any special geographic or other source or origin of the wool. On the contrary, some members of the wool trade and of the purchasing public understand and believe the term "Shetland" when applied to wool or wool products means the wool of, or made from the wool of, sheep grown on the Shetland Islands or the contiguous mainland of Scotland. From a consideration of the entire record the Commission concludes that the original meaning of the term "Shetland" as applied to wool and wool products has continued, and that it is the present understanding and belief of a substantial part of the wool trade and of the purchasing public that the term "Shetland" as applied to wool or wool products means the wool of, or made from the wool of, Shetland sheep grown on the Shetland Islands or the adjacent mainland of Scotland.

PAR. 6. The use by the respondents of the aforesaid marks, labels, and other representations concerning their respective products has had, and has, the capacity and tendency to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that the products so marked, labeled, or represented are made of wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, when in truth and in fact said products contain no wool taken from Shetland sheep.

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CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice 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 answers of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, 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 respondent, Old Colony Knitting Mills, Inc., a corporation, and respondent, Maine Spinning Co., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any yarn, garment, or fabric made of wool or simulating wool, do forthwith cease and desist from using the word "Shetland," either alone or in conjunction with any other word or words, to designate or describe any such yarn, garment, or fabric which is not the wool of, or made from the wool of, Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland.

It is further ordered, That respondents shall, within 60 days after the 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 the motion of respondent, Maine Spinning Co., to dismiss the complaint herein, or in the alternative to dismiss the complaint as to it, which motion was denied without prejudice to respondent's right to renew the same at the time of final argument and which motion was duly renewed, be, and the same hereby is, denied.

Complaint

IN THE MATTER OF

DO-RAY LAMP 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 4218. Complaint, Sept. 24, 1941¹—Decision, Feb. 3, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of fog lamps, auxillary driving lights and other accessories for use on automobiles and trucks; by means of circulars and advertisements in trade publications and statements on the containers—

Represented or implied that its "Bright Ray Crest Driving Lamp" provided new and unusual lighting safety when used on a motor vehicle, and developed 40,000 candlepower; would penetrate fog, snow, rain, or dust, regardless of their density, and would provide safe driving visibility of 1,500 feet under all conditions;

The facts being that many similar lamps provided the same safety under the same conditions and use; its said lamp developed substantially less than aforesaid candlepower, and would not penetrate fog, snow, rain, or dust to the extent claimed, or so as to assure visibility and safety under all conditions;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby causing it to purchase its said product:

Held, That its said acts and practices, as above 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. Clark Nichols for the Commission.

Mr. Norris Spector, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL 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 Do-Ray Lamp 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Do-Ray Lamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at

¹ Amended and supplemental.