

Syllabus

IN THE MATTER OF
WOOL TRADING 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 4267. Complaint, Aug. 26, 1940—Decision, Apr. 6, 1942*

Where a corporation, engaged in competitive interstate sale and distribution of hand knitting yarn direct to the purchasing public, advertising in periodicals of wide circulation and forwarding to those replying thereto various advertising material such as catalogues, cards, and circulars containing samples—

- (a) Made use, in designating certain yarns in its said advertising and on labels and tags attached thereto, of names (1) "Cashmere," "Genuine Cashmere," and "Genuine Cashmere Sport," and "Genuine Imported Cashmere," and (2) "Glow Tweed," "Petite Zephyr Tweed," "Ascot Tweed," and "Shag Tweed"; notwithstanding the fact such yarns were not, respectively, composed entirely of wool made from the hair of the cashmere goat as understood by public from word "cashmere," but were composed wholly or largely of other materials nor composed entirely of wool as long understood from word "tweed," but contained substantial percentages of rayon or cotton;
- (b) Made use of word "wool" in describing certain yarns, such as "Luster Wool," "Wool Bouclé," and of word "Angora" to designate others as "Sport Angora"; notwithstanding the fact the former yarns were not composed wholly of wool, but were partly rayon; nor did the latter contain any hair of the Angora goat;
- (c) Make use, as aforesaid, of word "crepe" to designate certain yarns as "Sparkle Crepe," and of word "Shetland" to designate others as "Shetland Floss"; notwithstanding the fact yarns thus designated, respectively, contained no silk, product of the cocoon of the silk worm, as long understood by purchasing public from unqualified word "crepe," but were made of rayon or a mixture thereof; and were not made of wool from Shetland sheep grown on the Shetland Islands or on the contiguous mainland of Scotland, as understood from use of word "Shetland";
- (d) Made use of word "Scotch" to designate certain yarns as "Scotch Tweed" and "Scotch Heather," and of word "Saxony" to designate others as "Saxony Zephyr"; notwithstanding the fact such yarns or the wool from which they were made were neither made in nor imported from either Scotland or the Province of Saxony;
- (e) Falsely represented that certain domestic yarns were imported products through use of word "Imported" to describe them;
- (f) Advertised and sold various yarns which were composed in whole or in part of rayon, but had the appearance of wool and silk, without disclosing such content of rayon, which, when so manufactured, is practically indistinguishable from silk or wool by the purchasing public, with result that it purchased same as being composed entirely of silk or wool; and
- (g) Used on its letterheads the legend "Manufacturers of Peter Pan Yarns," notwithstanding the fact it was not a manufacturer, preferably dealt with directly by a substantial portion of the public as securing, in its belief

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lower prices and other advantages, but obtained its yarns from other sources;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to its products and business status, and to cause said public to purchase substantial quantities of its yarns as a result of the erroneous belief engendered, thereby diverting trade to it from its competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and its competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Charles A. Vilas*, trial examiner.

Mr. Robert Mathis, Jr. and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. S. Robert Israel, 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 Wool Trading 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, Wool Trading 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 principal office and place of business at 361 Grand Street, in the city of New York, and State of New York.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the business of selling and distributing various grades and types of knitting yarn. Respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other corporations and with part-

nerships and persons likewise engaged in the business of selling and distributing various grades and types of knitting yarn in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the cashmere goat, and has for a long time been known well and favorably to the purchasing public. The word "cashmere" when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers is considered by members of the purchasing public as describing a product composed entirely of the hair of the cashmere goat.

The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of a product composed entirely of wool.

The word "crepe" is a word long and favorably known to a substantial portion of the purchasing public as descriptive of a certain type product made of unweighted silk, the product of the cocoon of the silk worm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities.

The word "Angora" has long been known to the purchasing public as the designation of products made from the hair of the Angora goat.

The purchasing public has long considered products normally composed of wool, and having the appearance of wool, to be wool, and not to be cotton, cotton and rayon, or other material; and it has likewise long considered products normally composed of silk, and having the appearance of silk, to be silk and not rayon or other material, unless in each instance the presence of material other than wool, or other than silk, is clearly and conspicuously disclosed.

There has long been a preference on the part of the public for dealing with persons who are prominently and favorably known.

A substantial portion of the purchasing and consuming public has long had a preference for dealing directly with the manufacturer, in the belief that lower prices, superior products, and other advantages can thereby be obtained.

PAR. 5. In the course and conduct of its business, in connection with the offering for sale, sale and distribution of its products in commerce, and for the purpose of inducing the purchase thereof by the public, respondent has caused various statements and representations, purportedly descriptive of its business and of its products, their place of origin or their respective constituent fibers or mate-

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rials, to be inserted in catalogs or sample books and price lists, on the labels attached to said products, and on its letter-heads, which it had distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Many of the designations of the yarns and of their constituent fibers and materials used by the respondent are false and misleading. Among and typical of such false and misleading designations are the following:

"Cashmere sport" for yarn which contains none of the wool of the cashmere goat.

"Genuine cashmere feather tone" for yarn which is not composed wholly of the wool of the cashmere goat, but is composed largely of other wool.

"Ascot tweed," "Zephyr tweed," "Shag tweed," for yarns that are not composed wholly of wool, but are composed of wool and rayon.

"Lustre Wool" for yarn that is not composed wholly of wool, but is composed of about equal parts of wool and rayon.

"Sparkle crepe" for yarn that is not composed wholly of silk, but is composed wholly of wool and rayon.

"Angora" for yarn that is not composed wholly of the wool of the Angora goat, but is composed partly of other wool.

"Frazee" and "Gimp" for yarns which have the appearance of being composed partly of silk, but which in fact are composed of wool and rayon or cotton and rayon.

Respondent has likewise misrepresented the place of origin of its yarns, or misrepresented domestic yarn to be imported. Among and typical of such misrepresentations are the following:

"Shetland floss," "Scotch heather," "Scotch tweed" for yarns that are not imported from the Shetland Islands or from Scotland.

"Imported cashmere (Feather tone)" for yarn that is not imported, but is of domestic origin.

Respondent has likewise made misrepresentations with respect to persons connected with its business, with the tendency and capacity of leading prospective purchasers to believe that prominent persons are connected with its business. Typical of such misrepresentations is the use of the name "Elsie Janice," who is stated in respondent's literature to be its "chief instructress"; whereas there is no such person, but said name so closely resembles the name of the famous actress "Elsie Janis" as to have the tendency and capacity to lead many persons to believe they are one and the same person.

Respondent has made further false and misleading statements with respect to its business status, as illustrated by the following: The

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letterheads employed by respondent in connection with its business as aforesaid carry the wording:

Wool Trading Co. Inc.
Manufacturers of Peter Pan Yarns

In truth and in fact respondent does not manufacture the yarns which it advertises and sells, but purchases the same from others.

The aforesaid false and misleading statements and representations used by respondent in connection with the conduct of its business as aforesaid are not all-inclusive, but are merely illustrative of the character and type of such false and misleading statements and representations made by respondent to induce the purchase of its merchandise.

PAR. 6. The use by the respondent of the aforesaid acts and practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. On account of this erroneous and mistaken belief, so induced by respondent, a number of the purchasing and consuming public have purchased a substantial volume of respondent's products, with the result that trade has been diverted unfairly to the respondent from its competitors who are also engaged in the sale and distribution of various grades and types of knitting yarn in commerce between and among the various States of the United States and in the District of Columbia. As a consequence thereof, injury has been, and is now being, done by respondent to commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 26, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Wool Trading Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for

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the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Charles A. Vilas, a trial 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 complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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. The respondent, Wool Trading Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business at 361 Grand Street, New York City, N. Y. Respondent is now, and for a number of years last past has been, engaged in the business of selling and distributing various grades and types of hand knitting yarn. At times respondent trades under the name Peter Pan Yarn Co., as well as under its corporate name, and certain of its yarns are designated by it as "Peter Pan" yarns.

PAR. 2. In the course and conduct of its business the respondent sells its yarns direct to members of the purchasing public, and causes its products, when sold, to be transported from its place of business in the State of New York to the 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 its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is and has been engaged in substantial competition with other corporations, and with firms and individuals, engaged in the sale and distribution of hand knitting yarns in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of promoting the sale of its products, respondent inserts advertisements in various periodicals having wide circulation throughout the United States. Upon receiving inquiries from members of the public in response to such advertisements, respondent forwards to such prospective purchasers various advertising material, such as catalogs,

card and circulars, containing samples of the various types and grades of yarn offered for sale by respondent. The various yarns are designated and described in respondent's advertising material by certain name, and these names are also used by respondent on labels and tags attached to the yarns themselves when they are sold to the public.

Among the names used by respondent to designate and describe certain of its yarns are "Cashmere," "Genuine Cashmere," "Genuine Cashmere Sport," and "Genuine Imported Cashmere." The word "cashmere" has long been understood by a substantial portion of the purchasing public as denoting a particular type of wool which is made from the hair of the cashmere goat, and when the word is used to designate knitting yarns the public understands that such yarns are composed entirely of such wool. Respondent's yarns bearing the names set forth above are not in fact composed wholly of wool made from the hair of the cashmere goat, but are composed wholly or largely of other materials.

Other names used by respondent to designate certain of its yarns are "Glow Tweed," "Petite Zephyr Tweed," "Ascot Tweed" and "Shag Tweed." The word "tweed" has long been understood by a substantial portion of the purchasing public as denoting products composed entirely of wool. Respondent's yarns described in the above manner are not in fact composed entirely of wool, but contain substantial percentages of rayon or cotton. Respondent also uses the word "wool" in describing certain of its yarns, as "Luster Wool" and "Wool Boucle." The yarns so designated are not in fact composed wholly of wool but are composed in part of rayon.

Respondent also uses the word "Angora" to designate certain of its yarns, as "Sport Angora." The word Angora has long been understood by the purchasing public as denoting products made from the hair of the Angora goat. The yarn designated by respondent as "Sport Angora" does not in fact contain any hair of the Angora goat but is composed entirely of other materials.

Respondent has also used the word "Crepe" in describing certain of its yarns, as "Sparkle Crepe." The unqualified word "crepe" has long been known to a substantial portion of the purchasing public as denoting products made entirely of silk, the product of the cocoon of the silk worm. The yarn designated by respondent as "Sparkle Crepe" did not in fact contain any silk but was composed of rayon or a mixture of rayon and other materials.

Respondent also uses the word "Shetland" to designate certain of its yarns, as "Shetland Floss." The word Shetland, when applied to knitting yarns, is understood by a substantial portion of the purchasing public as denoting yarns made of wool from Shetland sheep

grown on the Shetland Islands or on the contiguous mainland of Scotland. The yarns so designated by respondent are not in fact made of such wool.

Respondent also uses the word "Scotch" to designate certain of its yarns, as "Scotch Tweed" and "Scotch Heather." To a substantial portion of the public such use of the word Scotch constitutes a representation that the yarns so designated, or the wool composing such yarns, is imported from Scotland. In fact neither these yarns nor the wool of which they are made is imported from Scotland. Respondent also uses the word "Saxony" to designate certain of its yarns, as "Saxony Zephyr." To a substantial portion of the purchasing public the word Saxony, when so used, denotes that such yarns, or the wool composing them, is imported from the Province of Saxony. In fact neither such yarns nor the wool used therein is imported from Saxony.

Respondent also makes use of the word "Imported" in designating and describing certain of its yarns, thus representing that such yarns are imported from foreign countries, when in fact the yarns so designated are not imported products but are domestic products.

Respondent has also engaged in the practice of advertising and selling various yarns composed in whole or in part of rayon, without disclosing such rayon content. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate silk or wool. When manufactured to simulate silk, it has the appearance and feel of silk, and when manufactured to simulate wool, it has the appearance of wool. By reason of these qualities, rayon, when manufactured to simulate silk or wool and not designated as rayon, is practically indistinguishable by the purchasing public from silk or wool, as the case may be. Respondent's yarns have the appearance of wool or of wool and silk, and the failure of respondent to disclose the rayon content of such yarns has resulted in the purchase of such yarns by a substantial portion of the public under the erroneous impression that they were composed entirely of wool or of wool and silk.

PAR. 5. Respondent has also represented that it is the manufacturer of the yarns sold by it, such representation being made through the use on its letterheads of the legend, "Manufacturers of Peter Pan Yarns." Respondent does not own or operate any manufacturing plant and does not manufacture any of the yarns sold by it, but obtains its yarns from other sources. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with manufacturers, such preference being due in part to the

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belief that by dealing with manufacturers lower prices and other advantages may be obtained.

PAR. 6. The Commission finds further that the acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, character and origin of respondent's products, and with respect to respondent's business status, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's products as a result of the erroneous beliefs so engendered. In consequence thereof, substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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, testimony and other evidence taken before Charles A. Vilas, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Wool Trading Co., Inc., a corporation, trading under its corporate name and under the name Peter Pan Yarn Company, or trading under any other name, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its knitting yarns in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Cashmere," or any other word of similar import, to designate or describe any product which is not composed

entirely of the hair of the cashmere goat; provided, however, that in the case of a product composed in part of the hair of the cashmere goat and in part of other fibers or materials, such word may be used as descriptive of the cashmere fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

2. Using the words "wool" or "tweed," or any other word indicative of wool, to designate or describe any product which is not composed entirely of wool: *Provided, however,* That in the case of a product composed in part of wool and in part of other fibers or materials, such words 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 such other constituent fibers or materials.

3. Using the word "Angora," or any other word of similar import, to designate or describe any product which is not composed entirely of the hair of the Angora goat: *Provided, however,* That in the case of a product composed in part of the hair of the Angora goat and in part of other fibers or materials, such word may be used as descriptive of the Angora fiber content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

4. Using the unqualified word "crepe," or any other descriptive term indicative of silk, to designate or describe any product which is not composed entirely of silk, the product of the cocoon of the silk worm: *Provided, however,* That such word or descriptive term may be used truthfully to designate or describe the type of weave, construction, or finish, if such word is qualified by using in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words clearly and accurately naming the fibers or materials from which such product is made.

5. Using the word "Shetland," or any other word of similar import, to designate or describe any product which is not made from the wool of Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however,* That in the case of a product composed in part of such wool and in part of other fibers or materials, such word may be used as descriptive of the Shetland wool content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing such other constituent fibers or materials.

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6. Using the word "Scotch" to designate or describe any product which is not imported from Scotland or made of materials imported from Scotland.

7. Using the word "Saxony" to designate or describe any product which is not imported from the Province of Saxony or made of materials imported from the Province of Saxony.

8. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content, and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

9. Using the word "Imported" to designate or describe any product which is not in fact imported from a foreign country, or otherwise representing that any product is imported from a foreign country when such is not the fact.

10. Using the word "Manufacturers," or any other word of similar import, to designate or describe respondent's business, or otherwise representing that respondent is a manufacturer or that it manufactures the products sold by it.

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 provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized Rules and Regulations thereunder.

IN THE MATTER OF

SAMUEL GOTTLIEB AND PETER GOTTLIEB, TRADING AS
GOTTLIEB BROTHERS AND AS JACK FROST YARN
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4268. Complaint, Aug. 26, 1940—Decision, Apr. 6, 1942*

Where two individuals, engaged as wholesalers in the interstate sale and distribution of hand knitting yarns, in designating and describing their yarns on labels and tags attached thereto, and on advertising color cards containing samples thereof distributed among prospective retail purchasers—

- (a) Made use of names (1) "Cashmere Sport" and "Imported Cashmere," (2) "Zephyr Tweed," (3) "Angora" and "Sport Angora," and (4) "Shetland Floss" to designate certain of their yarns; notwithstanding the fact the yarns designated "Cashmere" were not made from the hair of the Cashmere goat, but were composed wholly of other wool; the "Zephyr Tweed" was not composed entirely of wool as understood from word "tweed," but contained a large percentage of rayon; said "Angora" yarns contained no hair of the Angora goat, but were composed entirely of other material; and the "Shetland Floss" was not made of wool from Shetland sheep grown on the Shetland Islands or the contiguous mainland of Scotland, as understood from word "Shetland";
- (b) Made use of words "Scotch Tweed," "English Zephyr," and "Saxony Zephyr" to designate certain yarns, when neither the yarns nor the wool of which they were made were imported from Scotland, England, or the Province of Saxony; and
- (c) Advertised and sold various yarns with appearance of wool or wool and silk without disclosing their content of rayon which, when made to simulate silk or wool, is practically indistinguishable therefrom by the purchasing public; with result that substantial portion of such public purchased said yarns as entirely wool or wool and silk;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products, and to cause it to purchase substantial quantities thereof as a result of the erroneous belief so engendered:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Miles J. Furnas* and *Mr. Charles A. Vilas*, trial examiners.

Mr. Robert Mathis, Jr., and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. S. Robert Israel, of New York City, for respondents.