

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.

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 Samuel Gottlieb and Peter Gottlieb, trading as Gottlieb Bros. and as Jack Frost Yarn Co., have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Samuel Gottlieb and Peter Gottlieb, are individuals, trading as Gottlieb Bros., and also as Jack Frost Yarn Co., with their principal place of business at 207 Avenue C, in the city and State of New York.

PAR. 2. Respondents are now and have been for a year or more last past engaged in the business of selling and distributing various grades and types of knitting yarns. Respondents are wholesale dealers and sell their products to retail dealers who in turn sell them to the purchasing public situated in various States of the United States and in the District of Columbia. Respondents cause said products, when sold by them, to be transported from their place of business in the State of New York to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said 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 said business respondents have engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by them are made by means of false representations on labels attached to their products and on various sample cards and other advertising matter circulated among purchasers, and by failure to disclose the rayon content of certain of their products. In furtherance of the foregoing practices and for the purpose of inducing the purchase of said product, respondents have caused false and misleading statements and representations purporting to be descriptive of such products and of their respective constituent fiber or material to be inserted in price lists, sample cards, and other advertising matter which is distributed by retailers who buy from respondents to prospective purchasers of said products situated in various States of the United States.

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PAR. 4. Among and typical of the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by respondents are made are the following: "Sport Angora," "Cashmere Sport," "Imported Cashmere," "Zephyr Tweed," "Persian Curl" and other similar words and terms, when in fact said products were not made of the fibers indicated by the use of these terms but were made from fibers other than those indicated.

Some of the aforesaid terms and others of similar import and meaning do not indicate the kind or type of material from which said products are made and are used on materials having the appearance and feel of either silk or wool. An example of this practice is the use of the words and phrases "Heatherstone," "Pompadour," "Paradise," "Duveen," "Magic Duveen," "Willow Down," "Supersheen," "Germantown," and "Persian Curl," when in truth and in fact said products are composed in whole or in part of rayon.

PAR. 5. Typical also of said acts and practices, respondents represent their said products as being of a finer grade, higher quality or of a different fiber than is actually the fact by the use of words and phrases indicative to the purchasing public of certain fiber, grade or quality. An example of this practice is the respondents' use of the words and phrases "Cashmere Sport" and "Imported Cashmere" in advertising material to designate and describe certain of their products which do not contain the hair of the Kashmir goat but instead are composed of other fibers.

PAR. 6. A further typical act and practice on the part of the respondents is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively to designate and describe certain yarn products as aforesaid which are composed in part of wool and in part of other materials. As an example of this practice, the respondents used the words "Tweed," "Worsted," "Angora," and "Cashmere" and other words of similar import and meaning indicative of wool in price lists, sample cards, and other advertising matter to designate the yarn products which are in fact composed of rayon and wool.

PAR. 7. The word "Angora" has long been applied to a particular type of wool that comes from the hair of the Angora goat and which product has for a long time been well and favorably known to the purchasing public. The word "Angora" 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 being a descriptive designation of an Angora wool product composed entirely of the hair of the Angora goat.

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

The word "Persian" has long been associated in the minds of the purchasing public with wool and wool products produced in Persia.

The words "Worsted" and "Tweed" are words long and favorably known to a substantial portion of the purchasing and consuming public as descriptive of certain types of fabrics composed entirely of wool.

PAR. 8. The word "rayon" is the name of a chemically manufactured fiber or fabric which may be manufactured so as to stimulate either silk or wool, and when so manufactured it has the appearance and feel of either silk or wool, as the case may be, and is by the purchasing public practically indistinguishable from silk or wool. By reason of these qualities, rayon, when manufactured to simulate either silk or wool and not designated as rayon, is readily believed and accepted by the purchasing public as being either silk or wool, as the case may be. By the use of the acts and practices herein set forth, the respondents place in the hands of uninformed or unscrupulous retail dealers a means and instrumentality where said retail dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing yarn or material manufactured from materials and fibers indicated by the use of the aforesaid terms or phrases.

PAR. 9. The use by the respondents of the foregoing acts and practices has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true and that respondents have truthfully represented the constituent fiber and material of which their products are made. On account of these erroneous beliefs, a number of the consuming and purchasing public purchases a substantial volume of respondents' products.

PAR. 10. The aforesaid acts and practices of 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 August 26, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Samuel Gottlieb and Peter Gottlieb, individuals trading as Gottlieb Bros. and as Jack Frost Yarn Co., 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 the complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondents, 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 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 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 respondents, Samuel Gottlieb and Peter Gottlieb, are individuals, trading as Gottlieb Bros., and also as Jack Frost Yarn Co., with their principal place of business at 207 Avenue C, New York City, N. Y. Respondents are now, and for more than 4 years last past have been, engaged in the business of selling and distributing various grades and types of hand knitting yard. Respondents are wholesale dealers, and sell their products to retail dealers who in turn resell such products to the purchasing public.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their 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. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their 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 business, and for the purpose of promoting the sale of their products, respondents dis-

tribute among prospective purchasers certain advertising material known as color cards, which contain samples of the various types and grades of yarn offered for sale by respondents. The various yarns are designated and described in such color cards by certain names, and these names are also used by respondents on labels and tags attached by the respondents to the yarns, and which remain on the yarns until after they are displayed and sold to the public.

Among the names which have been used by the respondents to designate and describe certain of their yarns are "Cashmere Sport" and "Imported Cashmere." The word "cashmere," when applied to wool products, has long been understood by a substantial portion of the purchasing public as denoting that the product so designated is made from the hair of the cashmere goat. Respondents' yarns bearing the names set forth above are not in fact made from the hair of the cashmere goat, but are composed wholly of other wool.

Another name used by respondents to designate certain of their yarns is "Zephyr Tweed." The word "tweed" has long been understood by a substantial portion of the purchasing public as denoting a product composed entirely of wool. Respondents' yarns described in the above manner are not in fact composed entirely of wool, but contain a large percentage of rayon.

Respondents have also used the word "Angora" to designate certain of their 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 yarns designated by respondents as "Sport Angora" do not in fact contain any hair of the Angora goat but are composed entirely of other materials.

Respondents also use the word "Shetland" to designate certain of their 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 respondents are not in fact made of such wool.

Respondents also use the word "Scotch" to designate certain of their yarns, as "Scotch Tweed." 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.

Respondents also use the word "English" to designate certain of their yarns, as "English Zephyr." To a substantial portion of the purchasing public the word "English," when so used, denotes that

such yarns, or the wool of which they are made, is imported from England. In fact neither the yarns so designated nor the wool used therein is imported from England.

Respondents also use the word "Saxony" to designate certain of their yarns, as "Saxony Zephyr." To a substantial portion of the purchasing public the words "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.

Respondents have also engaged in the practice of advertising and selling various yarns composed 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. Respondents' yarns have the appearance of wool or of wool and silk, and the failure of respondents 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. 4. The Commission finds further that the acts and practices of the respondents 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 respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' products as a result of the erroneous belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found 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 answer of respondents, testimony, and other evidence taken before Charles A. Vilas, a trial examiner of the Commission theretofore duly designated by it, in

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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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Samuel Gottlieb and Peter Gottlieb, individually, and trading as Gottlieb Bros. and as Jack Frost Yarn Co., or trading under any other name, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their 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 word "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 word 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 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 con-

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tiguous 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.

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

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

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.

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 provision in this order shall be construed as relieving respondents 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.

Syllabus

IN THE MATTER OF
SUPERIOR FELT AND BEDDING COMPANY

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

Docket 4309. Complaint, Sept. 10, 1940—Decision, Apr. 6, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of mattresses to retailers for resale to purchasing public—

- (a) Represented that certain of its mattresses were designed, sponsored, approved or recommended by physicians, and were in general use in hospitals, through use on labels attached thereto of such statements as "General Hospital Mattress," "Rx Just what the doctor ordered," together with outline of a red cross, and "Rx The Hospital Mattress" and picture of a doctor in uniform;

The facts being that its mattresses were not in general use in hospitals, or of a type peculiar to and generally used in hospitals, or "just what the doctor ordered," or endorsed, approved or recommended by doctors;

- (b) Represented that its said mattresses were so designed and constructed as to be capable of building a correct posture and correcting posture defects, through use of such statements on labels applied thereto as "Built Up Center—Posture Builder—Scientific Construction" and "Scientifically Posturized—Built up Center—Innerspring Construction";

The facts being there is no relationship between the positions assumed in sleep and a person's waking posture or carriage, nor any such relationship between such posture and the type of innerspring mattress on which one may sleep; and its said mattresses have no ability to, and will not, correct defects in the posture or carriage of the user, or "build" posture, either good or bad; and

- (c) Misrepresented retail price of its mattresses through placing on tags or labels attached thereto prices which were purely fictitious and greatly in excess of the retail value and customary prices at which said products were sold to the purchasing public, and thereby placed in the hands of department stores and other retailers means whereby they might mislead and deceive the purchasing public, a typical act consisting of selling a department store a 100-lot of mattresses of the same quality at \$12.95 each, less discount, which it labeled with various names and price marks, including "Golden Rest," \$39.50; "Cinderella," \$39.50; "Dream Ship," \$49.50; "Mammoth DeLuxe," \$44.50; and "Splendor," \$39.50; which were resold by said store, together with certain others purchased by it at \$10.75 each, less cash discount, at \$19.95, and in no case at the prices marked thereon by it; said store advertising in connection with said sale "It's your chance to save \$9.80 to \$19.55 and get the benefit of in-built comfort in Mattresses that are quality built * * *! Choose early";

With effect of misleading and deceiving a substantial portion of purchasing public into the mistaken belief that said mattresses possessed qualities which they did not possess, and customarily sold for prices for which they did not sell, thereby inducing said public to purchase substantial quantities of said mattresses, with result that trade was unfairly diverted to it from its competitors, and injury done by it to competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair