

Syllabus

IN THE MATTER OF

LOUIS A. WALTON CO., KLING BROS. & CO., INC., LEOPOLD
KLING AND SAMUEL KLINGCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4528. Complaint, June 30, 1941—Decision, Aug. 14, 1942*

- Where a corporation, which was the wholly owned selling subsidiary of a second corporate concern; said parent corporation and 2 brothers, who were officers of the 2 and together owned about 38,000 of the 50,000 shares outstanding of the latter; engaged, directly and through 8 other corporations, which, likewise thus controlled, were carried on, essentially, as one enterprise, in the manufacture and interstate sale and distribution of suits, topcoats, and overcoats, both direct to individual consumers and to retail dealers—
- (a) Made use of such designations and descriptions, on labels attached to samples of materials used in carrying on the business of corporation first referred to, as "Blue-Green Alpaca-Mohair Knit Back," "Camel Hair and Wool Blend," and "Silver Grey Mohair-Camel-Wool Blend" when such materials contained none of the hair of the alpaca or of the camel;
 - (b) Made use, as aforesaid, of descriptions and designations "Mohair and Wool Knit Back Overcoating—Green" and "Oxford Mohair-Wool Blend Topper" for materials which, respectively, had a cotton knit back and contained no mohair;
 - (c) Made use, as aforesaid, of descriptions "Green Shadow Stripe—12½ oz. Pure Worsted. Silk decoration" for materials in which the decoration was rayon or some fiber other than silk, the product of the cocoon of the silk worm;
 - (d) Falsely represented a domestic product as imported through attaching to samples of a material made in this country label reading "Imported Corona Brown Wool—Crisp Spun Homespun";
 - (e) Made use of term "The House of Wool Fabrics" on letterheads and in advertising, together with such statements as "Every Fabric is Guaranteed All Wool—Qualities you can only find in lines selling at \$35.00 and \$40.00. This we can prove. * * * A guarantee goes with every garment"; when in fact certain of said garments were not composed entirely of wool, and in some instances contained substantial percentages of cotton, rayon, or other fibers; and
 - (f) Failed to disclose the fact that substantial percentages of cotton and some rayon were contained in materials sold, through use, as typical, of such terms as "Oxford-Mohair Wool Blend Topper," to describe materials of wool, rayon, and cotton fibers, whereby as a result of failure to disclose such content of cotton or rayon (which, when manufactured to simulate silk or wool, is practically indistinguishable by the purchasing public from the one or the other), a substantial portion of the purchasing public was led to believe that the materials in question were composed entirely of wool;

Complaint

35 F. T. C.

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that said representations were true, thereby inducing it to purchase a substantial volume of the products in question:

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. Edward E. Reardon*, trial examiner.

Mr. Donovan Divet for the Commission.

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., 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 Louis A. Walton Co., a corporation, Kling Bros. & Co., Inc., a corporation, Leopold Kling and Samuel Kling, individually and as officers of said corporations, 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, Kling Bros. & Co., Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 333-339 West Van Buren Street, in the city of Chicago, State of Illinois.

Respondent, Louis A. Walton Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 407 South Market Street, in the city of Chicago, State of Illinois. It is a wholly owned and controlled subsidiary of respondent, Kling Bros. & Co., Inc., and is operated as a department of that company.

Respondent, Leopold Kling, is an individual, and is president of the corporate respondents, Louis A. Walton Co. and Kling Bros. & Co., Inc., respectively.

Respondent, Samuel Kling, is an individual, and is vice president of the corporate respondent Louis A. Walton Co. and vice president and treasurer of the corporate respondent, Kling Bros. & Co., Inc., respectively.

Respondents, Samuel Kling and Leopold Kling, individually, and as officers of respondent corporations, manage, control, and dominate the affairs and activities of said corporations with respect to the acts and practices herein set forth. Said individual respondents have their offices and place of business at 333-339 West Van Buren Street, in the city of Chicago, State of Illinois.

Complaint

PAR. 2. Respondents are now, and for more than 5 years last past, have been engaged in the sale and distribution of men's suits and clothing made to individual measurements. Respondents cause said products when sold to be transported from their places of business in the State of Illinois, to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain and at all times mentioned herein, have maintained a substantial 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 businesses in connection with the offering for sale, sale, and distribution of their products, in commerce, and for the purpose of inducing the purchase thereof by the public, respondents have caused various false, misleading, and deceptive statements and representations, descriptive of their businesses and the place of origin and the constituent fibers of their materials, to be printed on labels attached to samples of materials, and inserted in sales magazines, price lists, advertising placards and on letterheads which they have distributed among sales agents, customers and prospective customers located in the various States of the United States and in the District of Columbia.

PAR. 4. Among and typical of such false and misleading descriptions and designations used on labels attached to samples of respondents' materials are the following:

"Blue-Green Alpaca—Mohair Knit Back" for material which contains none of the hair of the alpaca.

"Camel Hair and Wool Blend." "Silver Gray Mohair—Camel Wool Blend" for materials which contain none of the hair of the camel.

"Mohair and Wool Knit Back Overcoating—Green" for materials which have a knit back made of cotton.

"Oxford Mohair—Wool Blend Topper" for materials which contain no mohair.

"Green Shadow Stripe * * * pure worsted-silk decoration" for materials in which the decoration is rayon or some fiber other than silk, the product of the cocoon of the silkworm.

PAR. 5. Respondents have likewise misrepresented the place of origin of their fabrics by misrepresenting domestic products to be imported. Among and typical of such misrepresentations used on labels attached to samples of respondents' materials is the following:

"IMPORTED Corona Brown Wool Crisp Spun Homespun" for fabrics that are not imported, but to the contrary are manufactured in the United States.

Complaint

35 F. T. C.

PAR. 6. Respondents have made further false and misleading statements with respect to their businesses and the kind and type of fabrics which they sell; the letterheads and advertising mentioned herein contain the following wording:

The House of Wool Fabrics.

Every Fabric Is Guaranteed All Wool—Qualities You Can Only Find in Lines Selling at \$35.00 and \$40.00. This We Can Prove.* * * A Guarantee Goes With Every Garment.

In truth and in fact the fabrics used by respondents in manufacturing men's suits and clothing are not composed entirely of wool but in many instances contain substantial percentages of cotton, rayon and other fibers.

PAR. 7. Respondents further misrepresent the materials of which some of their men's suits and clothing are manufactured in that they fail to disclose that substantial percentages of cotton and rayon are found therein. Among and typical of such misrepresentations used on labels attached to samples of respondent's material is the following:

"Oxford Mohair—Wool Blend Topper" for material composed of wool, rayon and cotton fibers.

Substantial quantities of cotton and rayon fibers may be combined with wool in such a manner that the cotton and rayon content is practically indistinguishable by the purchasing public from the wool and when cotton or rayon and wool fibers are so combined, and no disclosure is made as to the cotton or rayon content, the purchasing public is thereby led to believe that said materials are composed entirely of wool.

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 and feel 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. Products made of rayon which simulate silk or wool in appearance are accepted by the purchasing public as silk or wool where no disclosure is made that the products are actually made of rayon.

The word silk has had for many years and still has in the minds of the purchasing public, a definite and specific meaning, to wit, the product of the cocoon of the silkworm.

PAR. 8. The false and misleading statements and representations set forth herein, used by the respondents in connection with their

Findings

businesses 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 respondents to induce the purchase of their merchandise.

PAR. 9. The use by the respondents of the aforesaid 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 representations are true and on account of this erroneous and mistaken belief so induced by respondents, the purchasing and consuming public has purchased 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 June 30, 1941, issued and subsequently served its complaint in this proceeding upon respondents, Louis A. Walton Co., a corporation, Kling Bros. & Co., Inc., a corporation, and Leopold Kling and Samuel Kling, individually, and as officers of the corporate respondents, charging them with 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 answers by certain of respondents, testimony and other evidence in support of and in opposition to the allegations of the 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, answers thereto, testimony and other evidence, report of the trial examiner 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 full 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, Louis A. Walton Co., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Illinois, with its principal office and place of business at 407 South Market Street, Chicago, Ill. It is a wholly owned and controlled subsidiary of respondent, Kling Brothers & Company, Inc., and is operated as a selling agency of that company.

Respondent, Kling Bros. & Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 333-339 West Van Buren Street, Chicago, Ill.

Respondent, Leopold Kling, is an individual, and is president of each of the corporate respondents.

Respondent, Samuel Kling, is an individual, and is vice president of respondent, Louis A. Walton Co., and is vice president and treasurer of respondent, Kling Bros. & Co., Inc.

PAR. 2. The corporate respondents directly, and the individual respondents acting through the corporate respondents and other agencies, are now, and for many years last past have been, engaged in the manufacture, sale, and distribution of suits, topcoats, and overcoats, distributing such products both directly to individual consumers and indirectly through sales to retail dealers in such products.

Kling Bros. & Co., Inc., has two manufacturing subsidiaries, William Bradford Co., located at Davenport, Iowa, and Ed V. Price & Co., located at respondent's place of business in Chicago, both engaged in the manufacture of suits, topcoats, and overcoats. Kling Bros. & Co., Inc., has a number of subsidiaries in addition to respondent Louis A. Walton Co., including Whitney Tailoring Co., Chesterfield Tailoring Co (which is presently inactive), and Leeds Tailors. The Ed V. Price Co. also has subsidiaries, including Lamm & Co., A. E. Anderson Co. (which is presently inactive), and Murphy Bros. William Bradford Co. manufactures the garments sold by all the Kling Bros. & Co., Inc., subsidiaries, except Ed V. Price & Co., which does its own manufacturing. The subsidiaries of Kling Bros. & Co., Inc., other than the Bradford and Price companies are merely sales organizations engaged in the distribution of garments manufactured as aforesaid. With the exception of the Price company, which has its own sales organization, the sales of these subsidiaries are under the direction of the same general sales manager.

The parent company, Kling Bros. & Co., Inc., has outstanding 50,000 shares of capital stock, of which respondent Leopold Kling owns approximately 21,000, and his brother, respondent, Samuel Kling, owns approximately 17,000 shares. Leopold Kling directs the manufacturing and selling operations carried on by Kling Bros. & Co., Inc., through its several subsidiaries, and Samuel Kling directs the financial, property, and office affairs of the several companies. To-

gether the individual respondents control, dominate, and direct the business of Kling Bros. & Co., Inc., and its several subsidiary and affiliated corporations, and the Commission concludes that the business of these several corporations is carried on as essentially one enterprise in which the various corporations are in substance merely departments.

PAR. 3. In the course and conduct of the aforesaid business respondents have caused, and cause, their products, when sold, to be transported from their places of business to purchasers thereof at their respective points of location in various States of the United States other than the State in which the shipments originate and in the District of Columbia, and respondents maintain, and have maintained, a substantial 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. 4. In the course and conduct of their aforesaid business, in connection with the offering for sale, sale, and distribution of their products in commerce and for the purpose of inducing the purchase thereof by members of the public, the respondents have caused various statements and representations descriptive of their business and of the constituent fibers in their products and the place of origin thereof to be printed on labels attached to samples of such materials, inserted in sales magazines, price lists, advertising placards, and on letterheads which they have distributed among sales agents, customers, and prospective customers located in various States of the United States and in the District of Columbia.

Among the descriptions and designations on labels attached to samples of materials used in carrying on the business of respondent Louis A. Walton Co. during the fall season of 1939-40 were the following: "Blue-Green Alpaca-Mohair Knit Back" to designate and describe a material which contained none of the hair of the alpaca; "Camel Hair and Wool Blend" and "Silver Grey Mohair-Camel-Wool Blend" to designate and describe materials which contained none of the hair of the camel; "Mohair and Wool Knit Back Overcoating—Green" to designate and describe materials which had a knit back made of cotton; "Oxford Mohair-Wool Blend Topper" to designate and describe materials which contained no mohair; and "Green Shadow Stripe—13½ Oz. Pure Worsted. Silk Decoration" for materials in which the decoration was rayon or some fiber other than silk, the product of the cocoon of the silkworm.

PAR. 5. In the conduct of the business of respondent Louis A. Walton Co., during approximately the same period of time, respondents falsely represented the place of origin of fabrics offered for sale and sold. A label reading "IMPORTED Corona Brown Wool—Crisp

Findings

35 F. T. C.

"Spun Homespun" was attached to samples of a particular material which was not imported from any foreign country but which, on the contrary, was manufactured in this country. Respondents thus falsely represented a domestic product as an imported one.

PAR. 6. Respondents, in carrying on the business of Louis A. Walton Co., also made statements with respect to the business of that respondent and the kind and type of fabrics sold by it. The letterheads and advertising of said respondent contained the following:

THE HOUSE OF WOOL FABRICS

and

Every Fabric Is Guaranteed All Wool—Qualities you can only find in lines selling at \$35.00 and \$40.00. This we can prove. * * * A guarantee goes with every garment.

In truth and in fact certain of the fabrics offered for sale and sold by the Louis A. Walton Co. were not composed entirely of wool, and in some instances contained substantial percentages of cotton, rayon, or other fibers.

PAR. 7. Respondents, in carrying on the business of Louis A. Walton Co., also failed to disclose the fact that substantial percentages of cotton and some rayon were contained in materials sold. For example, the term "Oxford Mohair-Wool Blend Topper" was used to describe material composed of wool, rayon, and cotton fibers. Substantial quantities of cotton or rayon fibers may be combined with wool in such a manner that the cotton or rayon content is practically indistinguishable by the purchasing public from wool; and when cotton or rayon and wool fibers are so combined and no disclosure made as to the cotton or rayon content, a substantial portion of the purchasing public is thereby led to believe that said materials are composed entirely of wool.

PAR. 8. Rayon used in the production of cloth is a chemically manufactured fiber which may be so processed 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 and feel 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. Where no disclosure is made of rayon content of products which simulate silk or wool in appearance, such products are accepted by a substantial portion of the purchasing public as silk or wool. The word "silk" has had for many years, and still has, in the minds of the purchasing public a definite and specific meaning; namely, the product of the cocoon of the silkworm.

Order

PAR. 9. The use by respondents of the aforesaid 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 representations are true, and on account of this erroneous and mistaken belief so induced by respondents the purchasing and consuming public has purchased a substantial volume of respondents' products.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice and injury of the public and constitute 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 certain of respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs filed in support of and in opposition to said complaint, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents, Louis A. Walton Co., a corporation, and Kling Bros. & Co., Inc., a corporation, their officers, representatives, agents, and employees, and respondents Leopold Kling and Samuel Kling, individually, and as officers of respondents Louis A. Walton Co., and Kling Bros. & Co., Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of fabrics or articles of clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Alpaca," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of the hair of the alpaca: *Provided, however*, That in the case of a product composed in part of the hair of the alpaca and in part of other fibers or materials, such word may be used as descriptive of the alpaca hair 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 term "Camel Hair," or any other word or words of similar import and meaning, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of the hair of the camel: *Provided, however*, That in the case of a product composed in part of the hair of the camel and in part of other fibers or materials, such term may be used as descriptive of the camel hair content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating such other constituent fibers or materials.

3. Using the word "Wool," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to 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 the constituent fibers or materials of such product.

4. Using the word "Mohair," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any product which is not composed entirely of 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 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 "Silk," or any simulation thereof, either alone or in connection or conjunction with any other word or words, to designate, describe, or refer to any material which is not composed entirely of silk, the product of the cocoon of the silkworm: *Provided, however*, That in the case of material composed in part of silk the product of the cocoon of the silkworm, and in part of other fibers or materials, such word may be used as descriptive of the silk 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.

6. Representing by the use of the word "Imported," or in any manner whatsoever, that fabrics or garments of domestic manufacture are imported from any foreign country.

Order

7. Using the term "The House of Wool Fabrics," or any other words or terms of similar import or meaning, to designate, describe, or refer to any business which includes the offering for sale and sale of fabrics which are not composed entirely of wool or garments made from such fabrics.

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 such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

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 no provision of this order to cease and desist 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 rules and regulations promulgated thereunder.

IN THE MATTER OF

PAT V. JAMES, TRADING AS THE N-A COMPANY

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

Docket 4662. Complaint, Dec. 30, 1941—Decision, Aug. 14, 1942

Where an individual, engaged in the interstate sale and distribution of his "N-A No. 7," "Vicine," "Nature's Aid" or "N-A" medicinal preparation; by advertisements disseminated through the mails, by radio broadcasts and otherwise, directly and by implication—

- (a) Represented that his said product was a powerful germicide and antiseptic, was unequalled in stopping bleeding, and was a cure for athlete's foot and eczema;

The facts being that, when used externally, its therapeutic properties were limited to those of a mild astringent and mild antiseptic; used as an astringent, it would not arrest venous or arterial hemorrhages; its only value in the treatment of such conditions as athlete's foot or eczema was limited to giving temporary relief to itching and irritation; and it was not suitable to use on denuded skin surfaces where it might cause permanent disfigurement by the deposition of iron in the form of pigmentation; and

- (b) Represented that said preparation was a splendid iron tonic, and that use thereof would prevent lockjaw and blood poisoning; and that it was an effective treatment for indigestion, sour stomach, ptomaine poisoning, rheumatism, and kidney disorders;

The facts being that while it might supply some iron, it was not a splendid iron tonic, since its iron content was not in a form readily utilizable by the body; it would not prevent lockjaw or blood poisoning; and was of no substantial therapeutic value for the treatment of ailments above set forth or any disease;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it to purchase said preparation because of such belief;

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. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Cecil F. Travis, of Jackson, Miss., 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 Pat V. James, an individual, trading as The N-A Co., hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would