

Syllabus

IN THE MATTER OF

ABRAHAM WELKIN AND MINNIE WELKIN, TRADING AS
PRINCESS YARN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4631. Complaint, Jan. 22, 1942¹—Decision, Aug. 25, 1942*Where two individuals, engaged in interstate sale and distribution of knitting
yarns—

- (a) Made use in catalogues and on labels attached to their products of such terms as "Cashmere Sport Yarn," "Sporting Angora," "Shetland Floss," "Zephyr Tweed," and "Deluxe Tweed," understood by a substantial portion of the purchasing public to mean, respectively, yarns composed of the hair of the Cashmere goat, of the Angora goat, of wool derived from Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, or composed entirely of wool;

The facts being said "Cashmere Sport Yarn" was not composed in whole or in part of the hair of the Cashmere goat, said "Sporting Angora" was about 25 percent rabbit's hair and 75 percent wool, said "Shetland Floss" was made of domestic wool, and said "Zephyr Tweed" and "Deluxe Tweed" were not all wool, but contained both wool and rayon;

- (b) Falsely represented as silk yarns composed of cotton, rayon, and silk, and of 50 percent wool and 50 percent rayon, through designations "Silk Flake" and "Silk Wool," respectively;

- (c) Misrepresented their aforesaid and their "Frosted Zephyr," "Pompadour," and "Zephyr Paradise," and other yarns, through failure to disclose that they were composed in part of rayon which, when made to simulate silk or wool, is practically indistinguishable therefrom; with result that a substantial portion of the purchasing public bought said yarns as composed of the genuine product simulated thereby;

- (d) Falsely represented certain of their products as imported from Scotland or the Province of Saxony, respectively, through use of designations "Scotch Tweed" and "Saxony Zephyr" to describe yarn of domestic manufacture; and

- (e) Falsely represented that they owned a factory in which they manufactured the yarns they sold, through use of words "Office and Factory at 49 Essex Street, New York City"; notwithstanding fact they bought their supplies from domestic manufacturers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, thereby inducing it to purchase their products 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. John W. Addison*, trial examiner.

Mr. Donovan Divet for the Commission.

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

¹ Amended and supplemental.

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 Abraham Welkin and Minnie Welkin, his wife, individually, and trading as Princess Yarn Co., 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Abraham Welkin and Minnie Welkin, his wife, are individuals, trading as Princess Yarn Co., with their principal place of business located at 49 Essex Street, in the city of New York, State of New York.

PAR. 2. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of various grades and types of knitting yarns. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in the 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 said products in commerce between and among 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 inducing the purchase of their said products the respondents have engaged in the practice of falsely representing the constituent fiber or material of which their products are made, such false representations being made by means of statements and legends appearing in catalogs and on labels attached to said products and in other printed and written material which they have distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia.

Typical of the aforesaid practices is the use by the respondents of the words "Cashmere Sport Yarn" to designate and describe certain yarns which are not composed, in whole or in part, of the hair of the Cashmere goat.

The word "Cashmere" has long been understood and accepted by the purchasing public as designating and describing a particular type of wool derived from the hair of the Cashmere goat and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made entirely from the hair of the Cashmere goat.

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A further example of respondents' practice is the use of the words "Sporting Angora" to designate and describe yarns which are not composed, in whole or in part, of the hair of the Angora goat.

The word "Angora" has long been understood by the purchasing public as designating and describing a particular type of wool derived from the hair of the Angora goat and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made entirely from the hair of the Angora goat.

A further example of respondents' practice is the use of the words "Shetland Floss" to designate and describe yarns which are not composed, in whole or in part, of the wool of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland.

The word "Shetland" has long been understood by the purchasing public as designating and describing a particular type of wool derived from the fleece of Shetland sheep raised on the Shetland Islands or on the contiguous mainland of Scotland and when said word is used to designate and describe yarns having the general appearance of wool is understood by the purchasing public as denoting a product made from the wool of such Shetland sheep.

Each of the afore described wools has been for a long time and is now well and favorably known to the purchasing public and there is a demand, public acceptance, and preference on the part of the purchasing public for yarns made therefrom.

A further example of respondents' practice is the use of the terms "Zephyr Tweed" and "DeLuxe Tweed" to designate and describe certain of their yarns which are not composed entirely of wool. The yarns designated "Zephyr Tweed" and "DeLuxe Tweed" are composed of wool with rayon nubs.

The word "Tweed" has been long and favorably known to the purchasing public as descriptive of products composed entirely of wool.

PAR. 4. Another and typical act on the part of the respondents is that of falsely representing that certain of their yarns are composed of silk or of a mixture of silk and other materials when such is not the fact. Among such representations are the legends "Silk Flake" and "Silk Wool." "Silk Flake" does not contain any silk but is composed of a mixture of cotton and rayon. "Silk Wool" contains no silk but is composed of a mixture of wool and rayon.

The word "Silk" has had for many years and still has in the mind of the purchasing public a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years

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have held and still hold the confidence and esteem of the public for their preeminent qualities.

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 by the purchasing public practically indistinguishable from silk or wool as the case may be. Products made of rayon are accepted by the purchasing public as silk or wool even though such products may not be designated by terms representing or implying that they are silk or wool.

The respondents also sell and distribute other types of yarn containing rayon without disclosing the rayon content of such products. Among such products are the yarns hereinbefore referred to as "Zephyr Tweed," "DeLuxe Tweed," "Silk Wool," "Silk Flake" and certain other yarns designated by the respondents as "Frosted Zephyr," "Pompadour," "Zephyr Paradise," "Tropical Nub," "Mystic and Nub Velveen" and "Velveen." All of said yarns contain substantial percentages of rayon which has been manufactured so as to simulate wool or a mixture of silk and wool and said products have the appearance of wool or a mixture of silk and wool and are understood and accepted by the purchasing public as such.

PAR. 5. By the means and in the manner aforesaid respondents also engage in the practice of falsely representing the place of origin of certain of their products. Among and typical of such false representations are the legends "Scotch Tweed" and "Saxony Zephyr" used in designating certain of their yarns. Through the use of such legends the respondents represent that the yarn designated "Scotch Tweed" is made from wool imported from Scotland and that the yarn designated "Saxony Zephyr" is made from wool imported from Saxony. In truth and in fact the wool used in making such yarns is not imported from said locations.

PAR. 6. Respondents have also misrepresented the nature of their business by using the words "Offices and Factory at 49 Essex Street, New York City," in their catalogs which display the various kinds of yarn which they offer for sale, thereby representing that they are the owners of and conduct a factory in which their said yarns are spun and that they are the manufacturers of said yarns. In truth and in fact, respondents do not operate or control and have not either operated or controlled a plant, factory or machinery for the manufacture of their products, but on the contrary the respondents buy such articles of merchandise which are made or manufactured

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in a plant or factory and by machinery which they neither own, operate, nor control.

PAR. 7. A substantial number of the members of the purchasing public has a preference for buying merchandise, including the products sold by respondents, directly from the manufacturers thereof, believing that by so doing a more uniform line of goods, superior quality, lower prices and other advantages can be obtained.

PAR. 8. The use by the respondents of the foregoing 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 said statements and representations are true and that respondents have truthfully represented the constituent fiber and material of which their products are made, as well as the nature of their business. As a result of such erroneous and mistaken belief engendered as herein set forth the purchasing public has been induced to purchase and has purchased substantial quantities of respondents' products.

PAR. 9. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 13, 1941, issued and subsequently served its complaint in this proceeding upon respondents Abraham Welkin and his wife, Minnie Welkin, individually, and trading as Princess Yarn Company, charging them with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, the Commission on January 22, 1942, issued and subsequently served its amended and supplemental complaint upon said respondents, charging them with unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. Thereafter, testimony and other evidence in support of and in opposition to the allegations of said amended and supplemental complaint were introduced before an examiner of the Commission therefore 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 amended and supplemental complaint, testimony and other evidence, report of the trial examiner, and brief in

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support of the complaint (respondents not having filed brief and 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. Respondents, Abraham Welkin and his wife, Minnie Welkin, are individuals, trading as Princess Yarn Co., with their principal place of business located at 49 Essex Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of various types and grades of knitting yarns. Respondents cause their said products, when sold, to be transported from their place of business in the State of New York to purchasers thereof at their respective points of location in various other States of the United States. Respondents maintain, and have maintained, a source of trade in their said products in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business respondents have, by means of advertisements in magazines and in periodicals, secured inquiries concerning and requests for knitting yarns and have distributed to purchasers and prospective purchasers catalogues containing descriptions and samples of yarns offered for sale and sold by them. For the purpose of inducing the purchase of their said knitting yarns, respondents have engaged in the practice of falsely representing the constituent fibers or materials of which their yarns are made, such false representations being made by means of statements and legends appearing in catalogues which they have distributed among customers and prospective customers located in various States of the United States and on labels attached to their said products. Among and typical of the false representations made by respondents in the aforesaid manner are the following:

The use of the term "Cashmere Sport Yarn" to designate and describe certain yarns which are not composed in whole or in part of the hair of the Cashmere goat. The term "cashmere" as applied to knitting yarns is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Cashmere goat.

The use of the term "Sporting Angora" to designate and describe yarns which are not composed in whole or in part of hair of the Angora goat, but which are in fact composed of approximately 25% rabbit hair and 75% wool. The word "angora" as applied to knitting yarns

is understood by a substantial portion of the purchasing public to mean yarn made from the hair of the Angora goat.

The use of the term "Shetland Floss" to designate and describe yarns which are not composed in whole or in part of the wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland, but which are in fact made of domestic wool. The word "Shetland" as applied to knitting yarns is understood by the purchasing public to mean a particular type of wool derived from Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland.

The use of the terms "Zephyr Tweed" and "De Luxe Tweed" to designate and describe certain of their yarns which are not composed entirely of wool, but which in fact contain wool and rayon. The word "tweed" as applied to knitting yarns is understood by a substantial portion of the purchasing public to mean yarn composed entirely of wool.

PAR. 4. Various of the yarns sold and distributed by respondents are falsely represented as being composed in whole or in part of silk. The term "silk" is understood by a substantial portion of the purchasing public to mean silk, the product of the cocoon of the silkworm. Among the yarns described by respondents as being silk or containing silk is one designated "Silk Flake" which is in fact composed of cotton, rayon, and silk, and one described as "Silk Wool" which is in fact composed of approximately 50% wool and 50% rayon.

In addition to the false representations that certain yarns contain silk, respondents further misrepresent such yarns and others, such as "Frosted Zephyr," "Pompadour," and "Zephyr Paradise," by failing to disclose that they are composed in part of rayon. Rayon used in yarn is a chemically manufactured fiber which can be so made as to closely simulate silk or wool. When manufactured to simulate silk, it has the feel and appearance of silk; and when manufactured to simulate wool, it has the feel and appearance of wool. By reason of these qualities rayon, when manufactured to simulate silk or wool and not designated as rayon, is practically indistinguishable from silk or wool, as the case may be, and failure of respondents to disclose the rayon content of yarns containing that product has resulted in the purchase of such yarns by a substantial portion of the purchasing public under the erroneous impression that they were composed of the genuine product simulated.

PAR. 5. Respondents have falsely represented the place of origin of certain of their products. Among such false representations is the use of the term "Scotch Tweed" to designate and describe a yarn of domestic manufacture which is not composed of wool imported

from Scotland, and also the use of the term "Saxony Zephyr" to designate and describe a yarn of domestic manufacture which is not composed of wool imported from the Province of Saxony. A substantial portion of the purchasing public understands the term "Scotch Tweed" as applied to yarns to mean that the yarn or the wool from which it is made was imported from Scotland, and understands the term "Saxony Zephyr" as applied to yarns to mean that the yarn or the wool from which it is made was imported from the Province of Saxony.

PAR. 6. Respondents have also misrepresented the nature of their business by using the words "Office and Factory at 49 Essex Street, New York City," thereby representing that they are the owners of and conduct a factory in which the yarns which they offer for sale and sell are spun, and that they are the manufacturers of such yarns. In fact respondents do not operate or control, and have not operated or controlled a plant, factory, or machinery for the manufacture of the yarns sold by them, but, on the contrary, buy their supplies of yarn from domestic manufacturers. A substantial portion of the purchasing public has a preference for buying merchandise, including the products sold by respondents, directly from the manufacturer thereof, believing that by so doing certain advantages are obtained, such as securing a lower price through the elimination of middlemen.

PAR. 7. The use by the respondents of the acts and practices set forth above 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 said statements and representations are true, and as a result of such erroneous and mistaken beliefs, members of the purchasing public have been induced to purchase, and have purchased, substantial quantities of respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, 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

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examiner, and brief filed by counsel for the Commission, 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 respondents, Abraham Welkin and Minnie Welkin, individually, and trading as Princess Yarn Co. or under any other name, jointly or severally, their representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of 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 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 Cashmere goat: *Provided, however*, That in the case of a product composed in part of 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 "Angora," 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 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.

3. Using the word "Shetland," or any simulation thereof, either alone or in connection or conjunction with any other words or words, to designate, describe, or refer to any product which is not composed entirely of wool of Shetland sheep raised on the Shetland Islands or the contiguous mainland of Scotland: *Provided, however*, That in the case of a product composed in part of wool of Shetland sheep 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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4. Using the word "Tweed," 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 such other constituent fibers or materials.

5. Using the word "Scotch," 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 not imported from Scotland or made of materials imported from Scotland: *Provided, however,* That in the case of a product composed in part of wool imported from Scotland and in part of other fibers or materials, such word may be used as descriptive of the content imported from Scotland 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. Using the word "Saxony," 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 not imported from the Province of Saxony or made of materials imported from the Province of Saxony: *Provided, however,* That in the case of a product composed in part of wool imported from Saxony and in part of other fibers or materials, such word may be used as descriptive of the content imported from the Province of Saxony 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.

7. 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 product 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 content which is silk, the product of the cocoon of the silkworm, 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.

8. Advertising, offering for sale, or selling, products composed in whole or in part of rayon without clearly disclosing such rayon con-

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tent; and when 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.

9. Representing or implying by the use of the word "Factory," or in any manner whatsoever, that respondents own, control, or operate a factory in which the yarns they offer for sale or sell are made, or representing or implying in any manner that yarns or other products not manufactured by respondents are manufactured by them.

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

W. B. SAUNDERS COMPANY, J. B. LIPPINCOTT COMPANY,
C. V. MOSBY COMPANY, CHICAGO MEDICAL BOOK
COMPANY, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3558. Complaint, Aug. 26, 1938—Decision, Aug. 26, 1942

Where three corporations, engaged in the sale and distribution at wholesale and retail of medical books, and constituting, respectively, the largest wholesale distributors in New York and vicinity, in the Middle West, and in the South and Southwest of such books, substantial portion of which were purchased by schools, colleges, libraries, hospitals, and other State, county, and municipal institutions, and by departments and agencies of the United States Government—

- (a) Agreed among themselves, in 1935 and 1936, that in bidding and quoting prices for the medical book business of public institutions and Governmental agencies they, and each of them, would uniformly bid at, and quote, the prices and discounts fixed by the respective publishers, and thereafter did adhere to and quote prices and discounts so fixed; and
- (b) Entered into, on or about May 1936, an agreement and understanding assigning to one another certain territories of the United States for the handling and bidding for the medical book business of public institutions and Governmental agencies therein, agreeing not to bid or compete for such business in the particular territory assigned to one of the other distributors concerned; and pursuant thereto, refrained during the year aforesaid from bidding against or competing with one another in a large part of the United States, including the States of Texas, Illinois, and New York;

Tendency and effect of which agreements and understandings, and acts and things done pursuant thereto, were to eliminate and prevent price competition in the sale and offering for sale of medical books to public institutions and Governmental agencies throughout the United States, and to place in the hands of said distributors power to control and enhance prices of such books, and to restrain a normal flow of trade in commerce therein:

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

As respects proceeding involving alleged understandings and agreements entered into in 1935 and 1936 between the three largest wholesale distributors of medical books in New York and vicinity, in the Middle West, and in the South and Southwest, pursuant to which they uniformly bid at and quoted the prices and discounts for the medical book business of public institutions and Governmental agencies fixed by the publishers, and also assigned certain territories in the United States to one another, agreeing not to bid or compete against one another therein, and abiding thereby: A contention that it was more profitable for said distributors to confine their sale