

IN THE MATTER OF
ALEXANDER AUERBACH, TRADING IN HIS OWN NAME
AND AS FRANK CORWIN, ETC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT APPROVED SEPT. 26, 1914, AND
THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 5025. Complaint, Aug. 12, 1943—Decision, Apr. 18, 1944

Where an individual engaged under his own name and various trade names—subsequent to the dissolution of a corporation used by him for acts and practices below described—in the buying of woolen rags, clippings and other wool waste for shipment to reprocessing mills in other States and conversion into “shoddy,” and in the sale and distribution to his customers in various States either directly therefrom or after return to him—

- (a) Misbranded his said goods in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they did not, when marketed in commerce, have on or affixed thereto a stamp, tag, label or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool, non-wool fibers, and non-fibrous loading, filling or adulterating matter, and proper identification of the manufacturer or reseller, etc.;
- (b) Falsely represented orally, by telephone and telegraphic communications, through letters and otherwise, that his products were “wool” and that his said products could be labeled “wool” as defined by act in question, were “all wool” or “100% wool,” and that his stock generally could be labeled as “reprocessed wool” in accordance with such act, and thereby placed in the hands of customers the means whereby they, through wholesalers and retailers, might deceive members of the purchasing public into the mistaken belief that said “shoddy” products were all wool or all reprocessed wool, and as a consequence into purchase of substantial quantities thereof; and
- (c) Made use of fictitious names and shipped his said products thereunder to purchasers in various States, and thereby fraudulently concealed his real identity from purchasers who, having been previously deceived and defrauded by him under the name of his aforesaid dissolved corporation or in his own name, would not have made such purchases if his true identity had been known to them:

Held, That such acts, practices and methods were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Mr. R. P. Bellinger for the Commission.

Mr. Samuel Shapiro, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Alexander Auerbach, an individual, trading in his own name, and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company, hereinafter referred

to as the respondent, has violated the provisions of the said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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, Alexander Auerbach, is an individual, who trades in his own name and under the names of Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company. Respondent's business address is 439 Broadway, Brooklyn, N. Y.

PAR. 2. In 1936, the respondent organized the Hanover Wool Products Corporation, a New York corporation, of which he was the president and as such controlled and directed its sales policies and other activities, particularly with respect to the acts and practices hereinafter mentioned and described. Acting in said capacity and on his own individual responsibility, under the cloak and guise of the said corporate name and entity, the respondent engaged in the fraudulent and unlawful acts and practices hereinafter mentioned and described until the Federal Trade Commission began, in 1942, an investigation of his said acts and practices, and in December 1942 he brought about the dissolution of said corporation.

The respondent is now and was during the said period from 1936 to 1942, as set forth above, and constantly since the dissolution of said corporation in December 1942, has been engaged in the business of buying woolen rags, clippings and other wool waste, baling and shipping the same from his said place of business in the State of New York to reprocessing mills in various States of the United States other than the State of New York for conversion and manufacture into a product known in the trade as wool shoddy by carding, carbonizing and garnetting, after which, under respondent's directions, it is sold, transported, or distributed directly to customers of respondent in States other than those States wherein said shipments originate and in the District of Columbia, or is returned to respondent, who offers for sale, sells, delivers for shipment, ships, transports or causes it to be transported from his said place of business in the State of New York to purchasers in 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 his said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The products which have been sold and distributed by respondent in commerce as aforesaid since July 15, 1941, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the said act. Respondent's wool products are subject to the labeling provisions of said act and the rules and regulations thereunder. The said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said wool products, when marketed in said commerce, did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation

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not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or, in lieu thereof, a registered number with name of a reseller under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to Section 3 of the said act with respect to such wool product.

PAR. 4. In promoting the sale of many of his said products in commerce as aforesaid the respondent has falsely represented that his said products could be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; that his said products are "All Wool" or "100% Wool"; that his stock generally can be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and by the use of other similar false representations, not specifically set out herein, has represented his said products as being "wool," all of which false statements and representations have been disseminated in commerce by oral means, by telephone and telegraphic communications, by letters sent through the United States mails and otherwise.

PAR. 5. In truth and in fact many of respondent's said products consist of reclaimed woolen rags or other waste, converted into shoddy; they cannot be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; they are neither "All Wool" nor "100% Wool"; respondent's stock generally cannot be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and respondent's products are not "wool," as that term is accepted and understood by the consuming public.

PAR. 6. Through the use of the said acts and practices, as hereinabove alleged, the respondent places in the hands of his customers the means and instrumentalities whereby they, through wholesale and retail dealers, may mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said products are all wool or all reprocessed wool, when in fact they are neither, and because of said erroneous and mistaken belief to purchase substantial quantities of said products.

PAR. 7. The respondent has otherwise engaged in deceptive and misleading practices by adopting and using fictitious names in operating his said business and by causing his said products to be shipped in said fictitious names to purchasers in various States of the United States other than the States in which such shipments originate. In such manner and by said means the respondent has falsely and fraudulently concealed his real identity from purchasers to whom said products were transported and who were thus misled into the erroneous and mistaken belief that they were buying said products from dealers other than respondent and who, if the true identity of the seller of said goods had been known to them, would not have purchased the same because many of said buyers had been previously deceived and defrauded by respondent acting under the pretense and in the name of the said corporation, Hanover Wool Products Corporation, or in his own individual name.

PAR. 8. The aforesaid acts, practices and methods of respondent as herein alleged are all to the prejudice and injury of the public and con-

stitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Alexander Auerbach, an individual, trading in his own name, and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act and the Wool Products Labeling Act of 1939. After the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw such answer and to substitute therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Alexander Auerbach, is an individual, who trades in his own name and under the names of Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer and Hanover Wool Stock Company. Respondent's business address is 439 Broadway, Brooklyn, N. Y.

PAR. 2. In 1936, the respondent organized the Hanover Wool Products Corporation, a New York corporation, of which he was the president and as such controlled and directed its sales policies and other activities, particularly with respect to the acts and practices hereinafter mentioned and described. Acting in said capacity and on his own individual responsibility, under the cloak and guise of the said corporate name and entity, the respondent engaged in the fraudulent and unlawful acts and practices hereinafter mentioned and described until the Federal Trade Commission began, in 1942, an investigation of his said acts and practices, and in December 1942 he brought about the dissolution of said corporation.

The respondent is now and was during the said period from 1936 to 1942, as set forth above, and constantly since the dissolution of said corporation in December 1942, has been engaged in the business of buying woolen rags, clippings and other wool waste, baling and shipping the same from his said place of business in the State of New York to re-processing mills in various States of the United States other than the State of New York for conversion and manufacture into a product known in the trade as "shoddy" by carding, carbonizing and garnetting, after which, under respondent's directions, it is sold, transported, or distributed directly to customers of respondent in States other than those States

wherein said shipments originate and in the District of Columbia, or is returned to respondent, who offers for sale, sells, delivers for shipment, ships, transports or causes it to be transported from his said place of business in the State of New York to purchasers in 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 his said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The products which have been sold and distributed by respondent in commerce as aforesaid since July 15, 1941, are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in the said act. Respondent's wool products are subject to the labeling provisions of said act and the rules and regulations thereunder. The said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said wool products, when marketed in said commerce, did not have on or affixed thereto a stamp, tag, label or other means of identification or a substitute in lieu thereof as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber was 5 percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product of non-fibrous loading, filling, or adulterating matter; (c) the name of the manufacturer of the wool product, or, in lieu thereof, a registered number with name of a reseller under the conditions provided in the rules and regulations promulgated under such act, or the name of one or more persons subject to Section 3 of the said act with respect to such wool product.

PAR. 4. In promoting the sale of many of his said products in commerce as aforesaid the respondent has falsely represented that his said products could be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; that his said products are "All Wool" or "100% Wool"; that his stock generally can be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and by the use of other similar false representations, not specifically set out herein, has represented his said products as being "wool," all of which false statements and representations have been disseminated in commerce by oral means, by telephone and telegraphic communications, by letters sent through the United States mails and otherwise.

PAR. 5. In truth and in fact many of respondent's said products consist of reclaimed woolen rags or other waste, converted into shoddy; they cannot be labeled "Wool" as defined by the Wool Products Labeling Act of 1939; they are neither "All Wool" nor "100% Wool"; respondent's stock generally cannot be labeled as reprocessed wool in accordance with the Wool Products Labeling Act of 1939; and respondent's products are not "wool," as that term is accepted and understood by the consuming public.

PAR. 6. Through the use of the acts and practices as hereinabove set forth, the respondent places in the hands of his customers the means

and instrumentalities whereby they, through wholesale and retail dealers, may mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said products are all wool or all reprocessed wool, when in fact they are neither, and because of said erroneous and mistaken belief to purchase substantial quantities of said products.

PAR. 7. The respondent has otherwise engaged in deceptive and misleading practices by adopting and using fictitious names in operating his said business and by causing his said products to be shipped in said fictitious names to purchasers in various States of the United States other than the States in which such shipments originate. In such manner and by said means the respondent has falsely and fraudulently concealed his real identity from purchasers to whom said products were transported and who were thus misled into the erroneous and mistaken belief that they were buying said products from dealers other than respondent and who, if the true identity of the seller of said goods had been known to them, would not have purchased the same because many of said buyers had been previously deceived and defrauded by respondent acting under the pretense and in the name of the said corporation, Hanover Wool Products Corporation, or in his own individual name.

CONCLUSION

The acts, practices, and methods of respondent as herein found 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 and the Wool Products Labeling Act of 1939.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That the respondent, Alexander Auerbach, individually, and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "shoddy" or other "wool products," as such products are defined in the Wool Products Labeling Act of 1939, or other textile fiber materials, do forthwith cease and desist from:

1. Representing to purchasers and prospective purchasers that wool products, as such products are defined in the Wool Products Labeling Act of 1939, not composed exclusively of "wool," as wool is defined in said Act, are "wool," "100% wool," or "all wool," or composed of "wool."

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2. Representing to purchasers and prospective purchasers that wool products, as such products are defined in the Wool Products Labeling Act of 1939, may be labeled in accordance with the provisions of said act and the rules and regulations promulgated thereunder as "reprocessed wool," unless such products are composed exclusively of wool or reprocessed wool as those terms are defined in the said act; *provided, however*, That in the case of a product composed in part of "reprocessed wool," this order shall not be construed as prohibiting respondent from representing that such term may be used to designate such reprocessed wool content if the percentage of such content be stated.

3. Misrepresenting or concealing, through the use of fictitious names or otherwise, the identity of respondent or his business.

It is further ordered, That the respondent, Alexander Auerbach, individually, and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding "shoddy" or other "wool products," as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, by failing to securely affix to or place on each of such products a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of such wool product, or the manufacturer's registered identification number and the name of a seller of such wool product, or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; and provided, further, that nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

PHILIP R. PARK, INC. AND PHILIP R. PARK, HARRISON H. HAVNER, JOHN S. HUNT AND PHILIP E. IVERSEN

MODIFIED CEASE AND DESIST ORDER

Docket 4504. Order, April 20, 1944

Modified order, pursuant to provisions of Sec. 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on April 27, 1943, 36 F.T.C. 541, and in which Circuit Court of Appeals for the Ninth Circuit, on January 6, 1944, in *Philip R. Park, Inc., et al. v. Federal Trade Commission*, issued its final decree modifying aforesaid order of the Commission in certain particulars, and affirming and enforcing the same as thus modified—

Requiring respondent, its officers, etc., in connection with offer, etc., of "ManAmar" or "Cattle ManAmar," or any other similar feeds or feed supplements, to cease and desist from disseminating, etc., any advertisements, etc., to induce, etc., purchase in commerce, etc., of respondents' products, which misrepresent therapeutic value of products in question as in order specified; or misrepresenting, in connection with offer, etc., in commerce, of said feeds or feed supplements, therapeutic value thereof for certain ailments or conditions, or comparative value or qualities or properties thereof, as in said order in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on April 27, 1943, the Commission made its findings as to the facts herein and concluded therefrom that the respondents had violated the provisions of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist upon the respondents; and it further appearing that respondents thereafter filed their petition to review and set aside the said order to cease and desist in the Circuit Court of Appeals for the Ninth Circuit; that thereafter by stipulation signed by counsel for the Commission and counsel for respondents dated December 24, 1943, it was agreed that subparagraph 5 of the second part of said order should be modified in certain respects as specifically set out in said stipulation and that the Court should enter its decree modifying said order to cease and desist in said particulars and affirming and enforcing said order as so modified; that on January 6, 1944, the said Circuit Court issued its decree modifying, affirming and enforcing the said order to cease and desist in conformity with said stipulation.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this, its modified order to cease and desist in conformity with said decree:

It is ordered, That the respondent, Philip R. Park, Inc., a corporation, its officers, representatives, agents, and employees, and respondents, Philip R. Park, John S. Hunt, Philip E. Iversen, and Harrison H. Havner, individually, and as officers and directors of Philip R. Park, Inc., a corporation, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the