

Complaint

38 F. T. C.

IN THE MATTER OF

ERNEST O. RICH AND MICHAEL SIMEONE, DOING
BUSINESS AS RICH & COMPANY

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 5144. Complaint, Mar. 29, 1944—Decision, June 27, 1944

Where two partners engaged in the manufacture, introduction into commerce, sale, transportation and distribution of wool products, as defined in the Wool Products Labeling Act of 1939, including, among others, ladies' suits and other garments; Sold such products misbranded in violation of said act and the rules and regulations thereunder by failing to affix thereto a stamp, tag, label or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool and non-wool fiber, and maximum percentage of adulterating matter; and proper identification of the manufacturer, seller, etc. subject to the act:

Held, That said acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Mr. DeWitt T. Puckett for the Commission.

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 Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, hereinafter referred to as respondents, have violated the provisions of 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Ernest O. Rich and Michael Simeone, are copartners, trading and doing business as Rich & Company and have their principal office and place of business at 270 West 39th Street, New York, N. Y.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondent's said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool

products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were ladies' suits and other garments. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 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 was five 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 percentages in words and figures plainly legible by weight of the wool contents of such wool products where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool products.

PAR. 4. The aforesaid acts, practices and methods of the respondents, as alleged, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, 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, and the Wool Products Labeling Act of 1939, the Federal Trade Commission on the 29th day of March, 1944, issued and subsequently served its complaint in this proceeding upon respondents, Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts. After the issuance of said complaint, the respondents filed an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Ernest O. Rich and Michael Simeone, are copartners, trading and doing business as Rich & Company and have

their principal office and place of business at 270 West 39th Street, New York, N. Y.

PAR. 2. Respondents are engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of wool products, as such products are defined in the Wool Products Labeling Act of 1939, in commerce, as "commerce" is defined in said Act and in the Federal Trade Commission Act. Many of respondents' said products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since July 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported and distributed in said commerce as aforesaid, were ladies' suits and other garments. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said act and said rules and regulations by failing to affix to said products 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 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 was five 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 percentages in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool; (d) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

CONCLUSION

The aforesaid acts, practices and methods of respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder 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 and the answer of respondents, in which answer respondents admit all the material allegations of fact set

forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, 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 and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That respondents, Ernest O. Rich and Michael Simeone, individually, and as copartners, trading and doing business as Rich & Company, their 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 ladies' suits or other "wool products" as such products are 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 securely to affix to or place on 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 nonfibrous 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 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.

IN THE MATTER OF
VACU-MATIC CARBURETOR COMPANY

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

Docket 3388. Complaint, June 10, 1942¹—Decision, June 29, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Vacu-matic" device for attachment between the carburetor and the intake manifold of automobile engines; through advertisements in newspapers and periodicals and circulars, letters and other advertising media, and statements on the containers of said device, directly or by implication—

Represented that use thereof on automobile engines would result in a substantial reduction in gasoline consumption and increased mileage per gallon of gasoline, and in quicker starting, faster acceleration or pick-up, more power, and a smoother-running engine;

The facts being that tests by the Bureau of Standards and a leading carburetor manufacturer, supported by the testimony of a number of outstanding figures in the automotive and carburetor engineering field established that the only cases in which it would affect the consumption of gasoline were those in which the fuel mixture, due to improper adjustment of the carburetor, contained too much gasoline in proportion to the amount of air, in which cases the small amount of additional air admitted by the device might serve to "lean" the mixture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which might be accomplished through the use of said device and cause it to purchase substantial quantities as a result of the erroneous belief so engendered:

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

As respects the correctness of challenged claims made in behalf of the beneficial result to be obtained from the use of a device for attachment between the carburetor and the intake manifold of an automobile engine, in which the seller relied principally upon the results of certain road tests made under the supervision of one of its expert witnesses, and other tests thereof by means of a chassis dynamometer, and in which evidence in support of the complaint consisted of tests made by the Bureau of Standards and by one of the leading carburetor manufacturers, supported by the testimony of outstanding figures in the automotive and carburetor engineering fields, as well as road tests: such road tests are recognized by engineers generally as less reliable than laboratory tests, due to the number of variables to which the former are subject such as temperature, humidity, wind resistance, road conditions, density of traffic and the human element, i.e., manner of the driver's operation, and a chassis dynamometer, while useful for testing automobiles at service stations and similar places, is not a precision instrument, comparable with the instruments and methods used by said Bureau and the manufacturer referred to; and *held*, evidence introduced as aforesaid, in behalf of said claims, was insufficient to meet that introduced in support of the complaint.

¹ Amended.