

Complaint

IN THE MATTER OF
CEIL MALK, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914 AND THE WOOL PRODUCTS LABELING ACT OF 1939 APPROVED OCT. 14, 1940

Docket 5138. Complaint, Mar. 14, 1944—Decision, Apr. 6, 1945

Where a corporation engaged in the interstate sale to the general public from their store of wool products, including women's coats, suits and other garments—

- (a) Sold some of the aforesaid wool products misbranded in violation of the Wool Products Labeling Act and the rules and regulations promulgated there under in that said products did not have affixed thereto the required stamp, tag, label or other means of identification showing the name of the manufacturer or that of a subsequent seller or reseller and in that one garment did not have affixed to its interlining a stamp, tag, label or other means of identification, as provided by aforesaid act; and
- (b) With intent to violate the same and said rules and regulations, mutilated and participated in and caused the mutilation of stamps, tags, labels or other means of identification which had been affixed to certain of said wool products by the manufacturer and which purported to contain the information required thereby, including the percentage of wool, reprocessed wool, and reused wool, etc. and adulterating matter and identification of the manufacturer, seller, etc., through removing that portion which contained the name of the manufacturer or seller of said products; and did not replace the same:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act, and the rules and regulations promulgated thereunder, and were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Cotton, Brenner & Wrigley, 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 Ceil Malk, Inc., a corporation hereinafter referred to as respondent, has 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 its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ceil Malk, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York and has its principal office and place of business at 202 Livingston Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, operating a store at the aforesaid address selling to the general public wool products, as such products are defined in 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 said act.

PAR. 3. During all the time aforementioned, the respondent, has purchased and is now purchasing said wool products from various manufacturers located in States other than the State of New York, and has caused and is now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through respondent reach the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondent also purchases said products from various manufacturers located in the State of New York who manufacture such products for introduction into said commerce.

Said wool products transported in commerce as aforesaid and said wool products manufactured for introduction into said commerce are thereafter offered for sale and sold by respondent to the general public at its said place of business. Said products are offered for sale and some are sold to purchasers residing in States other than the State of New York and shipped to said purchasers at their respective points of residence from respondent's place of business in Brooklyn, N. Y.

PAR. 4. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondent as aforesaid since July 15, 1941, were women's coats, suits and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when offered for sale and sold by respondent, in that said products, when offered for sale and sold by respondent, did not have affixed thereto a stamp, tag, label or other means of identification 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 nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent 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; (d) the percentages in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondent at its said place of business, had affixed thereto stamps, tags, labels or other means of identification purporting to contain the information required by

the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did remove, and participate in and cause the removal of, the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. After said wool products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the provisions of said Wool Products Labeling Act of 1939 and said rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of the stamps, tags, labels or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof, or by some person authorized or required by said act to affix such stamps, tags, labels or other means of identification to said wool products.

PAR. 8. Said respondent did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondent's said acts and practices in removing and mutilating said stamps, tags, labels or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondent to the general public at its said store and place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing the information required by said act and said rules and regulations.

PAR. 9. The aforesaid acts, practices and methods of the respondent, as herein 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 March 14, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Ceil Malk, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts. The respondent filed no answer to the complaint. At a regularly scheduled hearing in the matter on June 20, 1944, a stipulation as to the facts was entered into between counsel representing the Federal Trade Commission and counsel representing the respondent by which it was agreed that, subject to the approval of the Federal Trade Commission, said stipulation of facts may be taken as the

facts in this proceeding. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the said stipulation of facts, the same having been approved by the Commission, the filing of a trial examiner's report, briefs and oral argument having been waived; 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, Ceil Malk, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, and has its principal office and place of business at 202 Livingston Street, Brooklyn, N. Y.

PAR. 2. Respondent is now, and for several years last past has been, operating a store at the aforesaid address, selling to the general public wool products, as such products are defined in 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 said act.

PAR. 3. During the time aforementioned, the respondent has purchased, and is now purchasing, said wool products from various manufacturers located in the State of New York, and has caused some of said products, when sold, to be shipped from respondent's said place of business in Brooklyn, New York, to the purchasers thereof located in States other than the State of New York.

PAR. 4. Among the wool products offered for sale and sold by respondent in commerce as aforesaid, since July 15, 1941, were women's coats, suits and other garments. Said products were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, when offered for sale and sold by respondent, in that said products, when offered for sale and sold by respondent as aforesaid, did not have affixed thereto a stamp, tag, label or other means of identification showing the name of the manufacturer of the wool product or the name of a subsequent seller or reseller of the product, as provided for in said act and the rules and regulations promulgated thereunder. One garment when offered for sale and sold as aforesaid by respondent, did not have affixed to the interlining thereof a stamp, tag, label or other means of identification, as provided by the Wool Products Labeling Act of 1939.

PAR. 6. Some of the aforesaid wool products, when received by respondent at its said place of business, had affixed thereto stamps, tags, labels or other means of identification purporting to show (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 nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufac-

turer's registered identification number and the name of a subsequent 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; (d) the percentages in words and figures plainly legible, by weight of the wool contents of said wool products where said wool product contained a fiber other than wool, which information is required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

After said products were delivered to the respondent at its said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondent to the general public, said respondent, with intent to violate the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, did mutilate and participate in and cause the mutilation of the stamps, tags, labels or other means of identification affixed to some of said wool products by the manufacturer thereof, which stamps, tags, labels or other means of identification purported to contain the information required by the provisions of said act and said rules and regulations, by removing that portion of said stamp, tag, label or other means of identification which contained the name of the manufacturer of the products or the seller of said products to the respondent, and said stamps, tags, or labels as mutilated, did not contain the name of the manufacturer of said products or the name of a subsequent seller or reseller, as required by said act and said rules and regulations.

PAR. 7. Said respondent did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondent's said acts and practices in mutilating as aforesaid said stamps, tags, labels, or other means of identification affixed to said wool products, and by its failure to affix to the interlining of the aforesaid garment a stamp, tag or other means of identification giving the information required by said act and said rules and regulations, said wool products, when offered for sale and sold by respondent to the general public at its said store and place of business, did not have affixed thereto stamps, tags, labels, or other means of identification containing all the information required by said act and said rules and regulations.

CONCLUSION

The aforesaid acts, practices and methods of the respondent, 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 a stipulation of facts entered into between counsel for the Federal Trade Commission and counsel for the respondent, by which stipulation the filing of briefs and oral argument were specifically waived; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the pro-

visions of the Federal Trade Commission Act and the provisions of the Wool Products Labeling Act of 1939.

It is ordered, That respondent, Ceil Malk, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the 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 women's coats and 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 to securely 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 products 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 respondent, Ceil Malk, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase, offering for sale, sale, or distribution of women's coats and suits or any other "wool products" as such products are defined in, and subject to, the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to any such "wool product" pursuant to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of said act, and which stamp, tag, label, or other means of identification purports to show all or any part of the following:

(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 products 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.

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

IN THE MATTER OF
HILLYARD OPTICAL COMPANY, ET AL.

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

Docket 4984. Complaint, June 26, 1943—Decision, Apr. 7, 1945

Where three partners engaged in the District of Columbia in the offer and sale of eye-glasses, lenses and frames therefor to members of the public; through advertisements in newspapers and by other means, directly and by implication—

- (a) Represented falsely that their said business was the oldest and largest optical company in Washington, D. C., and had been in existence for over 40 years; The facts being that their business had its origin in 1939 and their partnership, similarly designated, was formed in 1941;
- (b) Represented falsely that they made free examinations of the eyes of prospective customers;

The facts being that where a customer purchased glasses, cost of the examination was included in the price thereof, while in cases where for any reason, customer decided not to purchase glasses, they frequently charged and sought to collect a fee of \$2 or \$3 for the examination, and in some instances, where the customer objected to paying for the examination, which he understood from their advertising was free, they browbeat and threatened him, and otherwise sought to force payment of such fee before he was permitted to leave the premises;

- (c) Represented that they rendered efficient and satisfactory service, and guaranteed satisfaction to their customers;

The facts being that in many instances where they failed to render such efficient and satisfactory service, they also failed and refused to honor the guarantee of satisfaction made in their advertisements by statements such as "This is your assurance of guaranteed satisfaction"; prescribed glasses, in some instances, after an examination which lasted but a few minutes; furnished glasses to customers which did not correspond to their own prescription; many customers complained to the Board of Optometry for the District of Columbia; and, in many cases where customers were dissatisfied and appealed to them, in some cases many times, to correct faults in the glasses, furnish them with satisfactory glasses, or make refund or adjustment, failed or refused to do so and, in one instance, even sought to sell to customer her old glasses, which they had caused her to leave with them, as new;

- (d) Represented that the prices advertised were special and reduced prices and available for a limited time only; that complete single-vision spherical lens glasses, with any shape frames or rimless, and with case and cleaner, usually or regularly priced at \$15, were only \$5, and that bifocal genuine spherical Kryptok white lenses of a regular value of \$12 were offered for only \$5;

The facts being that said representations were false: such representations, continually repeated, as "Two Specials All This Week" in advertising glasses for \$5, "\$15 Value for \$5," and "Regular Value \$15," were used as a means of inducing prospective customers to come to their place of business, whereupon they sought to sell them glasses at much higher prices; they used many means to discourage prospective customers from insisting upon glasses at \$5, such as statements that the \$5 glasses would not be satisfactory, or that the customer could not be fitted with \$5 glasses, and in some instances accomplished such persuasion when the customer realized that he would have to pay for an examination if he did not take glasses, and, rather than lose the cost of examination, consented to buy higher-priced glasses; and Where a fourth individual, the father of said partners, similarly engaged in said District; through like advertisements, directly and by implication—