

IN THE MATTER OF
SCOTCH WOOLEN MILLS

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

Docket 940. Complaint, Nov. 6, 1942¹—Decision, May 1, 1945

Where a corporation engaged in the tailoring of made-to-measure clothing for men and women and in the sale and distribution thereof to purchasers throughout the United States through a retail branch at its home office and through some 2,500 dealers whom it furnished with samples, catalogs, display cards, window display advertisements, circulars for distribution to prospective customers, mats for newspaper advertising, and various other forms of advertising material—

Represented through corporate name "Scotch Woolen Mills" under which it traded and which it used on stationery and featured in its aforesaid catalogs, display cards, etc., frequently followed by a statement such as "World's Greatest Tailors" and, more recently, by the word "Tailors," that it was a manufacturer of woolen cloth, that the cloth used by it in tailoring the "made-to-measure" clothing offered for sale was woven in Scotland, and that it owned, operated, or controlled manufacturing establishments in Scotland in which such cloth was woven, or establishments in the United States in which it was woven from wool or yarn imported from Scotland;

Notwithstanding the fact that it purchased all the woolen cloth it used in tailoring said garments from the manufacturers or jobbers; and only a very small proportion of such cloth—and in some seasons none—was of Scotch wool or imported from Scotland;

With capacity and tendency to mislead a substantial portion of the purchasing public in the aforesaid respects and thereby induce the purchase of the made-to-measure clothing tailored by it by said public, which prefers clothing made of cloth woven from wool or yarn imported from Scotland, esteemed for quality and durability, and to deal directly with a clothing manufacturer who weaves his cloth also, as eliminating the profits of the middlemen and securing other advantages; and with result also of placing in the hands of dealers and others the means whereby members of the public might be misled and deceived concerning its business status and the source of the cloth used in its garments:

Held, That said 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.

As respects the alleged misleading use of the trade and corporate name "Scotch Woolen Mills" by a concern engaged in tailoring made-to-measure clothing which did not also weave the cloth from which its clothing was tailored, the use of words such as "World's Greatest Tailors" or "Tailors" in connection with the name "Scotch Woolen Mills" did not serve to inform the public that it was only a tailor and did not weave the cloth it used, but merely to emphasize the thought that it was a weaver also engaged in tailoring garments from the cloth it wove.

Before *Mr. John W. Addison*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Isaac S. Rothschild and *Mr. Arthur B. Schaffner*, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, on the 12th day of December, 1922, the Federal Trade Commission issued, and on the 14th day of December, 1922, served on the respondent Scotch Woolen Mills, its complaint; and,

Whereas, on the 18th day of July, 1924, the Commission entered its order dismissing said complaint; and,

Whereas, on the 4th day of August, 1942, a petition was filed with the Commission, praying that the order of dismissal be vacated and set aside, that an amended and supplemental complaint be issued and that the case be reopened for further proceedings as the public interest may require; and,

Whereas, on the 7th day of August, 1942, the Commission issued and on the 10th day of August, 1942, served on respondent an order, setting the 9th day of September, 1942, at its offices in Washington, D. C., as the time and place when and where a hearing on said petition would be held; and,

Whereas, after hearing oral argument, both for and against the prayers of the aforesaid petition, after consideration of the answer and brief filed by respondent and upon consideration of the premises, the Commission on the 25th day of September, 1942 issued, and on the 28th day of September, 1942 served on the respondent, its order, directing that the order dismissing the complaint heretofore entered in this matter on the 18th day of July, 1924, as aforesaid, be vacated and set aside and that this case be reopened for further proceedings as public interest may require,

Now therefore, 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 Scotch Woolen Mills, a corporation, hereinafter referred to as respondent, has 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. Respondent, Scotch Woolen Mills, is a corporation, organized under the laws of the State of Illinois with its principal place of business located on Adams, Halstead and Green Streets in the city of Chicago, Ill.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the tailoring of "made-to-measure" clothing from wool cloth of various patterns, designs and weaves and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia.

Respondent receives and accepts orders for its "made-to-measure" clothing from various local representatives located in the various States of the United States and in the District of Columbia and causes said clothing, when completed, to be transported from its place of business located in the State of Illinois to such local representatives at their respective points of location in the various States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said "made-to-measure" clothing in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the furtherance of the sale and distribution of its "made-to-measure" clothing, as aforesaid, respondent has been, and is now, engaged

in falsely representing the nature and extent of the business conducted by it and the source of the woolen cloth used by it in the manufacture of the aforesaid "made-to-measure" clothing, through deceptive and misleading representations and implications disseminated by advertisements inserted in newspapers and other periodicals and on letterheads, billheads, pamphlets, circulars, folders, spot cards and other advertising media.

Among and typical of such deceptive and misleading representations and implications are those made by respondent through the corporate and trade name under which respondent conducts its business. Respondent advertises its tailoring business and its "made-to-measure" clothing under the name "Scotch Woolen Mills" and causes said name to be prominently displayed in newspaper and periodical advertising, and on letterheads, billheads, pamphlets, circulars, folders, spot cards and other advertising media distributed to the various local representatives to be displayed by such representatives to the purchasing public.

PAR. 4. Through the use of the corporate and trade name "Scotch Woolen Mills" and through the use of the words "Scotch," "Woolen" and "Mills" in that corporate and trade name, respondent has variously represented and is now representing, directly and by implications:

1. That it is engaged in the business of manufacturing woolen cloth; and,
2. That the cloth used by it in the tailoring of the "made-to-measure" clothing distributed by it as aforesaid, is manufactured and woven in Scotland; and,
3. That it owns, operates or controls one or more factories or manufacturing plants located in Scotland, in which the cloth used by it, as aforesaid, is woven or manufactured; and,
4. That it owns, operates or controls one or more factories or manufacturing plants located in the United States, in which the cloth used by it, as aforesaid, is woven or manufactured from yarn or wool imported from Scotland.

PAR. 5. The name "Scotch Woolen Mills" and the words, "Scotch," "Woolen" and "Mills," as used by respondent in its corporate and trade name, are false and misleading.

The respondent is not engaged in the business of manufacturing woolen cloth. Respondent does not own, operate or control any factory or manufacturing plant, located either in Scotland or in the United States, in which woolen cloth used by it, as aforesaid, is woven or manufactured. In fact, respondent purchases all of the woolen cloth used by it in tailoring its "made-to-measure" clothing from jobbers or direct from the manufacturers of such woolen cloth.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for clothing manufactured from woolen cloth woven in Scotland and for clothing manufactured from woolen cloth woven from wool or yarn imported from Scotland. There is also a preference on the part of a substantial portion of the purchasing and consuming public and dealers to deal direct with the manufacturers of clothing who are also manufacturers or weavers of the cloth from which such clothing is tailored, in the belief that more reliance can be placed on such manufacturer with reference to carrying out contracts and in the further belief that lower prices, elimination of middleman's profits, superior products and other advantages can be obtained.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive corporate and trade name and representations and implications

arising therefrom, as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent is engaged in the business of manufacturing woolen cloth, as well as the business of manufacturing clothing, that the cloth used by respondent in the tailoring of the aforesaid clothing is manufactured or woven in Scotland, that respondent owns, operates or controls one or more factories or manufacturing plants in Scotland in which the cloth used by it in the tailoring of the aforesaid clothing is woven or manufactured, that respondent owns, operates or controls one or more factories or manufacturing plants located in the United States, in which the woolen cloth used by it, as aforesaid, is manufactured or woven from yarn or wool imported from Scotland and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's aforesaid "made-to-measure" clothing.

PAR. 8. The use by respondent of the foregoing false and misleading corporate and trade name "Scotch Woolen Mills" places in the hands of its local representatives a means and instrumentality by which said local representatives could and might mislead and deceive the purchasing public into believing any one or more of the erroneous, misleading and deceptive representations and implications set out in paragraph 4 hereof and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase respondent's aforesaid "made-to-measure" clothing.

PAR. 9. The aforesaid acts and practices of said respondent, 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 December 12, 1922, issued and subsequently served its complaint in this proceeding upon respondent, Scotch Woolen Mills, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint, testimony and other evidence were taken before trial examiners theretofore duly designated, and said testimony and other evidence were duly recorded and filed in the office of the Commission. The proceeding then came on for hearing on the complaint, answer, testimony and other evidence, briefs in support of and in opposition to the complaint, and the oral arguments of counsel, and the Commission on July 18, 1924, entered an order of dismissal without assignment of reasons.

On August 4, 1942, the Assistant Chief Counsel of the Commission filed a petition praying that the aforesaid order of dismissal be vacated, that an amended and supplemental complaint issue, and that the case be reopened for such further proceedings as the public interest may require. Thereafter, on August 7, 1942, the Commission ordered hearing on said petition, and on August 10, 1942, served said order on Scotch Woolen Mills, together with a copy of the petition. On September 9, 1942, Scotch Woolen Mills filed its answer to said petition, and on the same day oral argument of the matter was had before the Commission. On September 25, 1942, the Commission entered its order setting aside and vacating

the order of dismissal entered in this proceeding on July 18, 1924, and reopened the case for such further proceedings as the public interest required.

On November 6, 1942, the Commission issued and subsequently served upon respondent Scotch Woolen Mills its amended and supplemental complaint charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. After the issuance of said amended and supplemental complaint and the filing of respondent's answer thereto, testimony and other evidence were introduced before an examiner of the commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel; 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, Scotch Woolen Mills, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at Adams, Halstead, and Green Streets, Chicago, Ill. Respondent is now, and for many years last past has been, engaged in tailoring "made-to-measure" clothing which it sells to purchasers located throughout the United States.

PAR. 2. In the course and conduct of the aforesaid business, respondent causes said clothing to be transported from its place of business in Chicago, Ill., to purchasers thereof at their points of location in the various States of the United States and in the District of Columbia, and maintains, and has maintained, a course of trade in said "made-to-measure" clothing in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, Scotch Woolen Mills, was incorporated about 1919 and is successor to the business of a partnership which was organized about 1905 or 1906 and which traded under the name "Scotch Woolen Mills" until said business was taken over by the respondent corporation. The partnership and its successor, the respondent corporation, have at all times since 1906 been engaged in the sale and distribution of men's suits and overcoats "made-to-measure" for the ultimate purchasers. Within the last few years respondent has also engaged in the sale and distribution of "made-to-measure" women's suits and other garments. For many years the sale and distribution of merchandise was accomplished through retail establishments operated by the partnership and later by the corporate respondent. These retail branches were operated under the name "Scotch Woolen Mills." In the course of time, a large number of dealers were secured and the number of directly operated branches gradually decreased until at present the only retail branch maintained and operated directly by respondent is at its home office in Chicago. Respondent now has some 2,500 dealers, some of whom handle respondent's products ex-

clusively but who more usually conduct clothing stores, dry cleaning shops, and similar establishments and who handle respondent's products in connection with their other business. These dealers are furnished with samples of woolen cloth for display to their customers in order that selections may be made therefrom for the garments ordered. When a sale is made, the dealer takes the customer's measurements and records them on a form provided by respondent and in accordance with its instructions, and mails the measurements, with an order for the garments desired, to the respondent in Chicago. Respondent makes and ships the clothing so ordered to the dealer or direct to the dealer's customer, if so directed by the dealer. Originally, the business was conducted on a one-price policy; that is, a man's suit made from any sample offered was \$15. About 1919, the single-price policy was discontinued and retail prices of men's suits increased to \$32.50, \$36.50, and \$39.50, respectively. In 1920, two price lines were offered which retailed at \$43.50 and \$51.50, respectively. Since that time prices have fluctuated, the 1943 wholesale prices of men's suits having been in three lines priced at \$25.25, \$29, and \$31, respectively. Respondent has suggested the retail prices at which dealers should sell to the consuming public but has not attempted to control those prices. The number of sample patterns of cloth offered each season from which purchasers may make a selection has varied from about 210 to 300.

PAR. 4. (a) Respondent has at all times traded under its corporate name "Scotch Woolen Mills" and uses this name on its letterheads, envelopes, billheads, and other stationery. It furnishes to its dealers catalogs, display cards, window display advertisements, circulars for distribution to prospective customers, mats for newspaper advertising by dealers, and various other forms of advertising material for use in promoting the sale of its products, all of which feature the name "Scotch Woolen Mills," frequently followed by a statement such as "World's Greatest Tailors" and quite recently by the word "Tailors."

(b) At about the time the predecessor partnership entered the business described, the use of trade names containing the words "Woolen Mills" by tailoring concerns was relatively new. In succeeding years many such concerns were organized and operated upon a national or seminational scale. Typical of the names used to designate this type of business are "Dundee Woolen Mills," "American Woolen Mills," "English Woolen Mills," "Leeds Woolen Mills," "Glasgow Woolen Mills," "United Woolen Mills," and others. These tailoring concerns conducted their business more or less upon the same general plan as Scotch Woolen Mills. From about 1924 and in subsequent years, after suitable proceedings, this Commission issued a number of orders to cease and desist requiring certain tailoring houses operating upon a wide scale to give up the use of "Mills" or "Woolen Mills" as a designation for their business. Other concerns gave up the use of such designations for their tailoring business without any proceeding having been brought by this Commission. The record in this proceeding indicates that there are probably a number of tailors who do a local, intrastate business who designate themselves as "Woolen Mills," but respondent Scotch Woolen Mills is apparently the only tailoring concern carrying on a large interstate business which now characterizes itself as "Woolen Mills," when it does not in fact produce the cloth it uses in its tailoring business.

PAR. 5. By means of the name "Scotch Woolen Mills" used to designate and describe its tailoring business and placed before the public in con-

nection with such business in the manner heretofore described, respondent has represented, and now represents, that it is a manufacturer of woolen cloth, that the cloth used by it in tailoring the "made-to-measure" clothing offered for sale is woven in Scotland, and that it owns, operates, or controls manufacturing establishments in Scotland in which the cloth it uses is woven or establishments in the United States in which the cloth it uses is woven from wool or yarn imported from Scotland.

PAR. 6. There is a preference on the part of a substantial portion of the purchasing public for clothing made of woolen cloth woven in Scotland and for clothing made of woolen cloth woven from wool or yarn imported from Scotland. Such materials have a good reputation for quality and durability and are favorably regarded by large numbers of the purchasing public. There is also a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with a manufacturer of clothing who also weaves the cloth from which such clothing is tailored, because of the belief on the part of such members of the public that in this manner lower prices or greater value can be secured through the elimination of the profits of the middlemen, that superior products can be had, and other advantages obtained.

PAR. 7. In truth and in fact, respondent is not engaged in the business of manufacturing woolen cloth. The use of words such as "World's Greatest Tailors" or "Tailors" in connection with the name "Scotch Woolen Mills" does not serve to inform the public that respondent is only a tailor and does not weave the cloth it uses. In fact, it merely serves to emphasize the thought that respondent is a weaver also engaged in tailoring garments from the cloth it weaves. Respondent does not own, operate, or control any manufacturing establishment located in Scotland, or elsewhere, in which the woolen cloth used by it in tailoring the garments which it offers for sale and sells is woven. As a matter of fact, respondent purchases all of the woolen cloth used by it from the manufacturers or jobbers. Only a very small proportion of the cloth used by respondent has been of Scotch wool or imported from Scotland. Of the 210 to 300 cloth patterns offered each season, the proportion of Scotch wools has been from 4 to 15 patterns, and in some seasons none of the goods offered was Scotch woolen.

PAR. 8. The use by respondent of the misleading and deceptive corporate and trade name "Scotch Woolen Mills" in the manner heretofore stated has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent manufactures the woolen cloth it uses in tailoring the clothing offered for sale and sold by it; that the cloth used by respondent in tailoring its clothing is woven in Scotland; that respondent owns, operates, or controls manufacturing establishments in Scotland in which the cloth used by it is woven, or owns, operates, or controls such establishments elsewhere in which the cloth it uses is woven from yarn or wool imported from Scotland; and, because of such erroneous and mistaken beliefs, has the capacity and tendency to induce a substantial portion of the purchasing public to purchase the "made-to-measure" clothing tailored by respondent. The use of said misleading and deceptive corporate and trade name in the manner stated also places in the hands of dealers and others the means whereby members of the public may be misled and deceived into erroneous and mistaken beliefs concerning respondent's business status and the source of the cloth of which respondent tailors the garments offered for sale and sold by it.

CONCLUSION

The aforesaid acts and practices 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 matter having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the other proceedings had, as recited in the findings as to the facts herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Scotch Woolen Mills, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of articles of clothing and like merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Mills," or any other word or words of similar import or meaning, in its corporate or trade name or to designate, describe, or refer to its business; or representing or implying in any manner that it manufactures the cloth used in the articles of clothing sold or offered for sale by it; or representing or implying in any manner that it owns, operates, or controls any mills or manufacturing establishment in which the cloth used in said articles of clothing is produced.

2. Using the word "Scotch," or any simulation thereof, in its corporate or trade name when such corporate or trade name is used to designate or describe a business which deals principally in products not of Scotch origin; or representing or implying in any manner that articles of clothing or materials therein which are not of Scotch origin are of Scotch origin.

It is further ordered, That respondent shall, within 60 days after the 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
CHARLES A. BILGMAN, TRADING AS ILLINOIS
HERB COMPANY

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

Docket 4460. Complaint, Feb. 4, 1941—Decision, May 1, 1945

Where an individual engaged in the interstate sale and distribution of various medicinal and cosmetic preparations; through advertisements in newspapers and periodicals, and in almanacs, circulars, pamphlets, etc.—

- (a) Represented falsely that his "Calexa Herb Compound" was a cure and effective treatment for chronic constipation, bloating, gas, and sour stomach; that his "Baya Mate" was of substantial value as a tonic, promoted mental alertness and induced sound sleep, fed the nervous system, was of substantial benefit to the genital organs, and was of substantial value in combating alcoholism; and that his "Sonada Tonic" was a cure and competent treatment for headaches, gas, bloating, and biliousness, stimulated the assimilation of food, and was an effective tonic;
- The facts being said "Compound" and "Sonada Tonic" possessed no therapeutic value except insofar as their laxative properties might afford temporary relief, and said "Baya Mate" was wholly incapable of feeding the nervous system;
- (b) Represented falsely that its "Diatol" was a competent and effective antiseptic and astringent for use as a nasal and vaginal douche and as a gargle or mouth wash and for use in the treatment of wounds; that its "Verbita Tonic" was a competent and effective tonic and treatment for nervous disorders; and that its "Mari-Tabs" was an effective tonic and was of substantial therapeutic value for weak, run-down, tired, sluggish, restless, nervous and underweight persons;
- (c) Represented falsely that its "Tamrex Herb Compound" was a competent treatment for rheumatism and for the pains and discomforts associated therewith; that its "Lura" was of substantial value in the elimination of halitosis; and that its "Dorelle Herb Douche" was a competent vaginal douche;
- (d) Represented falsely that its "I.H.C. Pectora Compound" was a cure and competent treatment for asthma; that its "Coltsfoot" was a cure and effective treatment for pleurisy, bronchitis, asthmatic attacks, coughs, and congestions; and that its "Garlic Tablets" possessed substantial therapeutic value in the treatment of high blood pressure;
- (e) Represented falsely that its "Golden Seal" was an effective tonic for the stomach and liver, that it stimulated the circulation, and was of substantial therapeutic value in the treatment of nervousness; that its "Blue Vervain" constituted an effective treatment for simple nervous conditions; and that its "Golden Goose Ointment" was a cure or remedy for inflammation and congestion due to bronchial irritation of the chest and throat;
- (f) Represented falsely that its "Boneset" was a cure and competent treatment for colds, La Grippe and influenza; that its "Horsetail Rush" constituted a cure or remedy for diseases and disorders of the kidneys and bladder generally, removed stones from the kidneys and bladder, and was a cure or remedy for blood in the urine and for inflammation and catarrh of the kidneys and bladder; and that its "Life Everlasting" was a cure and effective treatment for colds;
- (g) Represented falsely that its "Mormon Herb Compound" was a competent and effective treatment for minor disorders of the female organs, including menstrual