

Complaint

IN THE MATTER OF

EDWARD LEVENTHAL, AND JACOB HURWITZ, COPARTNERS, TRADING AND DOING BUSINESS AS LEVENTHAL & HURWITZ, AND HARRY HABER, TRADING AND DOING BUSINESS AS HABER & COMPANY

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

Docket 5125. Complaint, Feb. 3, 1944—Decision, May 14, 1946

Where an individual engaged in the sale and distribution to the public from three retail stores in the District of Columbia of women's coats and suits, many of which were composed in whole or in part of wool and were wool products within the intent and meaning of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder—

Sold and distributed products which were misbranded in that they did not have affixed thereto a stamp, tag, label, or other means of identification containing the information required by said act and said Rules in that the coat of a two-piece suit labeled "100% all wool," and otherwise represented composed entirely of wool, was in fact composed of about 50% wool and 50% rayon; in that tags failed to give any information at all as to the fiber content of the product involved, were affixed only to the coat or skirt of two-piece suits and not to both; and gave either no information at all or insufficient information as to the identity of the seller of the product or the person introducing the same into commerce or engaged in the sale, transportation, or distribution thereof in commerce:

Held, That such 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 were 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* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. De Witt T. Puckett and *Mr. G. M. Martin*, for the Commisison.

Mr. Milton J. Levy, of New York City, for Edward Leventhal and Jacob Hurwitz.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for Harry Haber.

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 Edward Leventhal and Jacob Hurwitz, individually and as copartners, trading and doing business as Leventhal

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& Hurwitz, and Harry Haber, an individual trading and doing business as Haber & Co., 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 its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Edward Leventhal and Jacob Hurwitz are copartners, trading and doing business as Leventhal & Hurwitz, and have their principal office and place of business at 500 Seventh Avenue, New York, N. Y.

PAR. 2. Respondent Harry Haber is an individual, trading and doing business as Haber & Co. His principal office and place of business is at 1205 G Street NW., Washington, D. C. He also operates stores at 3046 Fourteenth Street NW., and at 3038 Fourteenth Street NW., Washington, D. C. The last-mentioned store is operated under the trade name, "Bradley's." The wool products referred to in paragraphs 3 and 4 hereof are manufactured by respondents Leventhal and Hurwitz, and sold to respondent Haber who sells said products at retail in said stores.

PAR. 3. Respondents Leventhal & Hurwitz are engaged in the manufacture for introduction into commerce and all of said respondents are engaged in the introduction into commerce and in the sale, distribution and transportation 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, and 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 wool 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 wool act and the said rules and regulations.

PAR. 4. Among the wool products manufactured for introduction into commerce by respondents Leventhal and Hurwitz, and among the wool products introduced into commerce and sold, transported, and distributed in said commerce by all of said respondents, are ladies' coats, suits, and other garments. Exemplifying respondents' practice

of violating said Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products in violation of the provisions of said wool 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 5 per centum 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 per centum 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 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.

PAR. 5. 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 February 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing by the respondents of their answers to the complaint, evidence in support of and in opposition to the complaint was introduced before a trial examiner of the Commission theretofore duly designated by it. Subsequently, the original trial examiner being unable by reason of other duties to continue in the proceeding, another trial examiner was duly designated by the Commission, with the consent of the respondents, and additional evidence was introduced before

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such examiner. All of the evidence introduced before both of the examiners was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answers, evidence, report of the second trial examiner upon all of the evidence (respondent Haber having agreed that said examiner might take all action which might be necessary in the disposition of the proceeding), and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Edward Leventhal and Jacob Hurwitz are copartners trading and doing business under the name Leventhal & Hurwitz, with their principal office and place of business located at 500 Seventh Avenue, New York, N. Y. These respondents are engaged in the manufacture of women's coats and suits and in the sale and distribution of such products throughout the United States.

PAR. 2. Respondent Harry Haber is an individual trading and doing business under the name Haber & Co., with his principal office and place of business located at 1205 G Street NW., in the city of Washington, D. C. He is engaged in the sale and distribution, in commerce in the District of Columbia, of various articles of women's apparel, including coats and suits. He owns and operates in said District three retail stores in and from which his merchandise is sold to the public.

PAR 3. The Commission having concluded that the allegations of the complaint have not been sustained as to respondents Edward Leventhal and Jacob Hurwitz, and that the complaint should be dismissed as to these respondents, the term "respondent" as used herein-after has reference only to respondent Harry Haber.

PAR. 4. Among the products sold and distributed by respondent in commerce as aforesaid are many which are composed in whole or in part of wool, as that term is defined in the Wool Products Labeling Act of 1939, and which are "wool products" within the intent and meaning of said act and the rules and regulations promulgated thereunder. Certain of such products sold and distributed by respondent since July 15, 1941, have been misbranded in that they did not have affixed thereto a stamp, tag, label, or other means of identification con-

taining the information required by said act and said rules and regulations. In one instance the coat of a two-piece suit was labeled "100% All Wool," and was otherwise represented by respondent as being composed entirely of wool, when it was in fact composed of approximately 50 percent wool and 50 percent rayon. In another instance the tag affixed to the product failed to give any information at all as to the fiber content of the product. In other instances tags were affixed only to the coat or skirt of two-piece suits and not to both garments as required by the rules and regulations. In still other instances the tags gave either no information at all or insufficient information as to the identity of the manufacturer or seller of the product or the person introducing the product into commerce or engaged in the sale, transportation, or distribution of the product in commerce.

CONCLUSION

The acts and practices of the respondent as herein found are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder and are to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, evidence in support of and in opposition to the complaint, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that respondent Harry Haber has violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

It is ordered, That respondent Harry Haber, individually and trading as Haber & Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from selling and distributing in commerce, as "commerce" is defined in the aforesaid acts, women's coats and suits, or other "wool products" as defined in and subject to the Wool Products Labeling Act of 1939, which contain, purport to contain, or are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act,

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and which products are misbranded in that they do not have affixed thereto 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 products, 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 nothing contained in this order shall be construed as limiting any applicable provisions of the Wool Products Labeling Act of 1939 or the rules and regulations promulgated thereunder.

It is further ordered, That said 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.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed as to respondents Edward Leventhal and Jacob Hurwitz.

Syllabus

IN THE MATTER OF

SIMON ACKERMAN MANUFACTURERS & TAILORS, INC.,
SIMON ACKERMAN, MAY ACKERMAN, MYRON ACKERMAN,
AND RAYMOND ACKERMAN

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

Docket 5109. Complaint, Dec. 31, 1943—Decision, May 15, 1946

The purchasing public believes that merchants retiring from or going out of business make price concessions in the sale of their merchandise which are not obtainable from merchants in the usual and customary course of business, and, as a result of such belief, purchases merchandise sold by merchants representing that they are going out of business in preference to merchandise offered by those who do not make such representations.

Where a corporation and four officers and directors thereof, who managed and controlled its affairs, engaged in the interstate sale and distribution of men's suits, top coats, overcoats, and other clothing to and through retail dealers and also through their own retail stores in various States—

Falsely represented, directly or indirectly, that they were going out of business and that for this reason their merchandise was being offered at specially reduced prices, and that they were custom tailors, through such statements in radio broadcasts and in advertisements in newspapers, magazines, and trade journals and on placards and other advertising material as, "Here is the clothing news of the decade. The Simon Ackerman Company, makers of men's fine clothing, is going out of business," "After 45 years Simon Ackerman retires from business. Entire stock must be disposed of immediately," "Manufacturers, tailors discontinuing retail business, closing its retail stores." "We have decided to * * * quickly liquidate this business finally and forever";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby to cause it to purchase substantial quantities of their merchandise; whereby substantial trade was diverted unfairly to them from their competitors:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. D. C. Daniel* for the Commission.

Stroock & Stroock & Lavan, of New York City, and *Watters, Cowan & Baldrige*, of Washington, D. C., for respondents.