

Complaint

IN THE MATTER OF

THE PIONEER MANUFACTURING CO.

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 5344. Complaint, June 28, 1945—Decision, May 16, 1946

Where a corporation engaged in the manufacture and interstate sale and distribution, among other things, of floor mops—

- (a) Falsely represented through use of trade name "Woolvet" in catalogs and on container labels and tags, and through such statements as "Chemically Treated," "Wool-Rayon Cotton," and "Texture Yarn" and "The Yarn in this Mop is manufactured from WOOL-RAYON SILK AND COTTON," that its mops were composed of wool or of a combination of wool and other fibers; When in fact they were not made entirely of wool, some contained no wool, and some were entirely cotton;

With tendency and capacity to mislead prospective purchasers into the erroneous belief that such representations were true, and thereby to induce them to purchase substantial quantities of said mops; and

Where said corporation, in connection with the introduction or manufacture for introduction into commerce, or sale, transportation, or distribution in commerce of certain of said mops, which were composed in part of wool, reprocessed wool or reused wool—

- (b) Misbranded them in violation of the Wool Products Labeling Act and Rules and Regulations promulgated thereunder, in that they did not have on or affixed thereto the required stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool, reused wool, nonwool fiber and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller:

Held, That acts, practices, and methods last referred to constituted violation of said Wool Products Act and Rules, etc., and that all acts, practices, and methods aforesaid were 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.

Mr. J. W. Brookfield, Jr., and *Mr. G. M. Martin* for the Commission.
Burgess, Fulton & Fullmer, of Cleveland, Ohio, 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 the Pioneer Manufacturing Co., 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

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in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Pioneer Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and has its principal office and place of business at 3053 East Eighty-seventh Street, Cleveland, Ohio. The respondent is now, and for more than 1 year last past, has been engaged in the manufacture and sale of household cleaning accessories, among which are floor mops.

Respondent causes, and for more than one year last past has caused, certain of said mops when sold by it to be transported from its place of business in the State of Ohio to various purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said mops in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business and for the purpose of inducing the purchase of its said floor mops, the respondent adopted and has used and now uses the term "Woolvet" as a trade name to designate and describe the said mops. This term appears in prominent type in the catalogs distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia, on labels attached to the containers in which the mops are displayed for sale and are sold to the public and on certain of the tags attached to the said mops.

Respondent also makes and has made various statements and representations purportedly descriptive of the nature of the constituent fibers of its said mops. Such statements and representations appear in the catalog distributed as aforesaid and on the tags which were and are attached to the mops.

Among and typical of the aforesaid statements and representations are the following:

Chemically Treated
Wool-Rayon Cotton
Texture Yarn.

Ideal Mop for Waxed
or Polished Floors

The Yarn in this Mop is manufactured
from WOOL-RAYON SILK AND COTTON

Through the use of the aforesaid trade name "Woolvet" and the statements and representations disseminated as aforesaid, the respondent represents and has represented that the said mops are com-

posed of wool or are composed of a combination of wool, rayon, silk, and cotton, or a combination of wool, rayon, and cotton.

The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact said mops are not made of wool, and many of said mops are not composed of a combination of wool, rayon, silk, and cotton but are made entirely of cotton.

PAR. 3. The use by the respondent of the designations and representations as set forth herein in connection with the offering for sale, sale, and distribution of its said mops has had and now has the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct and to induce them to purchase substantial quantities of said mops on account thereof. Furthermore, the aforesaid acts and practices of respondent have the effect of placing in the hands of retail dealers who purchase said mops and resell the same to the purchasing public means and instrumentalities whereby they may mislead and deceive the purchasing public in the particulars aforesaid.

PAR. 4. Respondent is also 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, respondent has 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 commerce by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 5. Among the wool products introduced and manufactured for introduction into commerce and sold, transported, and distributed in commerce as aforesaid, were the "Woolvet" mops. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is his misbranding of the aforesaid mops in violation of the provisions of said act and the said rules and regulations by failing to affix to said mops 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 per centum 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 the said act with respect to such wool product.

PAR. 6. The acts, practices, and methods of respondent, as alleged in paragraphs 4 and 5 hereof, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and all of the afore-said acts, practices, and methods as alleged herein are to the prejudice and injury of the public and constitute unfair or deceptive acts or 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 June 28, 1945, issued and thereafter served its complaint in this proceeding upon respondent the Pioneer Manufacturing Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts and of the rules and regulations promulgated under the said Wool Products Labeling Act of 1939. After the filing of respondent's answer in this proceeding, a stipulation as to the facts was entered into between Richard P. Whiteley, assistant chief counsel of the Federal Trade Commission, and counsel for the respondent whereby it was agreed that, subject to the approval of the Commission, said statement of facts may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a report

upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent the Pioneer Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3053 East Eight-seventh Street, Cleveland, Ohio. The respondent is now, and for more than 1 year last past has been, engaged in the manufacture and sale of household cleaning accessories, among which are floor mops, and it causes, and has caused, certain of said mops, when sold to be transported from its place of business in the State of Ohio to purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia. Respondent thus maintains, and at all times mentioned herein has maintained, a substantial course of trade in said mops in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business the respondent adopted, and has used and now uses, the term "Woolvet" as a trade name to designate and describe such mops. This term appears in the catalogs distributed among customers and prospective customers located in the various States of the United States and in the District of Columbia, on labels attached to the containers in which the mops are displayed for sale and are sold to the public, and on certain of the tags attached to the said mops. Respondent also makes, and has made, various statements and representations purportedly descriptive of the nature of the constituent fibers of its said mops. Such statements and representations appear in its aforesaid catalog. Among and typical of the statements and representations made are the following:

Chemically Treated
Wool-Rayon Cotton
Texture Yarn

* * *

Ideal Mop for Waxed
or Polished Floors

The Yarn in this Mop is manufactured
from WOOL-RAYON SILK AND COTTON

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PAR. 3. By means of the trade name "Woolvet" as a designation for its said mops, and by means of the aforesaid statements and representations concerning its said mops, respondent represents, and has represented, that its mops are composed of wool or of a combination of wool, rayon, silk, and cotton, or of a combination of wool, rayon, and cotton. In truth and in fact, however, said mops are not made entirely of wool, and some contain no wool. Some of said mops are not composed of a combination of wool, rayon, silk, and cotton but are made entirely of cotton.

PAR. 4. The use by respondent of the designations and representations as hereinabove set forth in connection with the offering for sale, sale, and distribution of said mops has had, and now has, the tendency and capacity to confuse and mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations and designations are true and correct, and to induce them as a result thereof to purchase substantial quantities of said mops.

PAR. 5. The "Woolvet" mops manufactured and sold by respondent are represented in the aforesaid manner as wool or as containing wool, and some of said mops are in fact composed 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, respondent has violated the provisions of said act and said rules and regulations through the introduction and manufacture for introduction into commerce, and in the sale, transportation, and distribution of its misbranded mops in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act. Exemplifying respondent's misbranding practice is its failure to affix to said mops 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 percentum 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 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

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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 the said act with respect to such wool product.

CONCLUSION

The acts, practices, and methods of respondent, as found in paragraph 5 hereof, constitute misbranding of wool products in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and all of the aforesaid acts, practices, and methods are 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act and of the Wool Products Labeling Act of 1939:

I. *It is ordered*, That the respondent, the Pioneer Manufacturing Co., 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 floor mops in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(a) Using the word "Woolvet," or any other word or words of similar import or meaning, to designate, describe, or refer to mops which are not made or composed of wool.

(b) Representing that its mops are composed of or contain wool, rayon, silk, cotton, or any other fibers or combinations thereof which such mops do not in fact contain.

II. *It is further ordered*, That the respondent, the Pioneer Manufacturing Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in con-

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nection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution of such products in commerce, as "commerce" is defined in the aforesaid acts, do forthwith cease and desist from misbranding mops 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 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 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 is 5 per centum 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 respondent shall, within 60 days after service 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.

Syllabus

IN THE MATTER OF

ELIZABETH SCHERER AND SHERRY MOORE SCHERER,
TRADING AS SHERRY-MOORE GIFTS

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

Docket 5400. Complaint, Nov. 5, 1945—Decision, May 20, 1946

Where two individuals engaged in the competitive interstate sale and distribution of luggage, vanity chests, toiletries, novelties, and other articles of merchandise—

- (a) Furnished various plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes in the sale and distribution of said merchandise to the consuming public, and the distribution to operators and to members of the public of push cards, order blanks, and circulars describing and depicting the merchandise and explaining their plan of selling the same and of allotting it as premiums or prizes to the operators of the push cards and the public, under which plan, as typical, a customer who selected by chance from the 76 feminine names displayed on the push card, the name corresponding to that concealed under the card's master seal, received for the amount paid by him—determined by the chance number punched—at his option, a utility case or a musical vanity chest; and thereby—Supplied to and placed in the hands of the operators—who made use of such push cards in accordance with the aforesaid plan, involving a game of chance or sale of a chance to procure an article at much less than its normal retail price—the means of conducting lotteries, contrary to an established public policy of the United States Government, and in competition with many who are unwilling to use a method contrary to public policy and refrain therefrom;

With the result that many purchasers were attracted by said sales plan and were thereby induced to buy and sell said individuals' merchandise in preference to that of said competitors, and with tendency and capacity thereby to unfairly divert substantial trade in commerce to them from such competitors; and

- (b) Falsely represented through statements in their advertising literature "a gift to remember you by," "this item is definitely our proudest gift offer" and "additional surprise gift," that the articles of merchandise sold and distributed by them were free or a gift, when in fact they gave no merchandise away and the so-called gifts were compensation for selling their merchandise; and
- (c) Falsely represented that the retail price of their musical chest was \$15, through statements "List price \$15" in their circulars; when in fact such so-called list price was fictitious;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with capacity and tendency thereby to induce its purchase of said merchandise:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Louis Lindauer, of Brooklyn, N. Y., for respondents.