

IN THE MATTER OF
DAVID D. DONIGER & 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
APPROVED OCT. 14, 1940

Docket 5157. Complaint, May 8, 1944—Decision, Apr. 24, 1947

Where a corporation engaged in the manufacture and interstate sale and distribution of sportswear, including sweaters, sport coats and other garments, of which only a very small percentage, clearly described as such were imported, and which corporation, known familiarly to the trade and public as the McGregor Co., sold its products under the trademark "McGregor," and featured the Scotch theme in its wholesale showroom through various depictions and otherwise—

- (a) Made use of such obviously British or Scotch sounding trade names as "Scotchshire," "Ryder Vest Scot," "Yorkshire Quad," and "Shetlane," to designate and identify sweaters made by it in the United States;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers as to the actual country of origin of said products;

- (b) Made use also of trade names which carried some British or Scotch connotation or association and included such terms as "Bonnie Lamb," "Heather Vee," "Lochmoor," and "Tweedmoor" to designate and identify such products; and

- (c) Made use in connection with its said domestic products, of pictures, designs and symbols connoting and suggesting British or Scotch origin, and including a green and red plaid, usually displayed on its letterheads, labels, tags, billheads, boxes, wrappers, catalogs, and other forms of advertising matter, and also, in some instances, of a fanciful design in the nature of a coat of arms, and included also in advertising a picture of a Scottish knight or warrior dressed in kilts of scotch plaid and bearing a shield and sword;

With tendency and capacity, lacking clear and conspicuous disclosure of the actual country of origin, in connection with such trade names, pictures, designs, and symbols, to mislead purchasers and prospective purchasers in said respect;

- (d) Offered and sold certain garments which resembled in texture and appearance those made from silk and long esteemed as such, without disclosing, in words familiar to the purchasing public, that they were composed in whole, or in part, of rayon;

With capacity and tendency to mislead a substantial portion of the purchasing public as to the fiber content thereof, and to mislead and deceive wholesale and retail purchasers thereof, and with the result of thereby placing in the hands of purchasers of its products for resale a means and instrumentality whereby they might mislead the purchasing public with respect thereto:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce; and

Where said corporation, engaged in the introduction and manufacture for introduction into commerce, and in the sale, transportation and distribution of products composed in whole, or in part, of wool, reprocessed wool, or reused

Complaint

wool, as defined in the Wool Products Labeling Act of 1939, and as such subject thereto and to the rules and regulations promulgated thereunder, and including articles of wearing apparel such as sweaters, sport coats, and other garments—

- (e) Caused said articles to be misbranded within the intent and meaning of said act, and said rules and regulations through its failure to affix thereto a stamp, tag, label, or other means of identification, showing the percentage of the total fiber, weight of wool, reprocessed wool, reused wool, nonwool fiber, and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller;
- (f) Caused said articles to be misbranded as aforesaid through use on the same garments of labels containing the required information, and of conflicting labels which did not show such information and contained such statements as "wool and cashmere," "lamb's wool and kid mohair," and "wool and camel's hair";

With capacity and tendency to confuse and deceive the purchasing public as to the fiber contents of garments in question;

- (g) Caused said articles to be misbranded as aforesaid through use of perforated tags, labels, or other means of identification which contained the required information on the portion of the tag, etc., which displayed the statement "Detach for Stock Control"; and
- (h) Caused said articles to be misbranded through use of tags, labels, or other marks of identification in which all or part of the required information contained thereon had been rendered illegible or obscure by crowding, intermingling, or superimposing thereon other marks, figures, and statements:

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 constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.
Covington, Burling, Rublee, Acheson & Shorb, of Washington,
 D. C., 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 David D. Doniger & 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, David D. Doniger & Co., is a corporation, organized, existing, and doing business under and by virtue

Complaint

43 F. T. C.

of the laws of the State of New York, and has its principal office and place of business at 303 Fifth Avenue, New York, N. Y.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in manufacturing and selling various kinds of wearing apparel. Respondent operates manufacturing plants at 430 Morris Avenue, Summit and at Dover, N. J.

At its plant in Summit, N. J., the respondent manufactures various kinds of sportswear. At its plant at Dover, N. J., it manufactures sweaters for the armed forces. Respondent also sells sweaters to the general public, manufactured for it by various sweater manufacturers. A small percentage of the sweaters it sells to the general public are imported from the British Isles.

Respondent causes said products, when sold by it, to be transported from its place of business in New York or from one of its places of business in New Jersey to various purchasers of said products 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 products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of promoting the sale of its said products, the respondent has used various trade names, symbols, designs, pictures, and many other representations in its advertising literature and in other ways for the purpose and with the effect of inducing the purchasing public to believe that it is engaged in the sale of merchandise, all of which is imported from the British Isles or manufactured from fabrics imported therefrom.

PAR. 4. Among and typical of the aforesaid practices is the following: The walls of respondent's showrooms at 303 Fifth Avenue, New York City, have the appearance of a Scottish house with heavy brown wooden beams jutting therefrom at regular intervals, with colored old-fashioned lanterns hanging from some of the beams, Scottish appearing shields and coats of arms painted at various places on the walls, pictures depicting Scotmen dressed in shawls, kilts, and tam-o'-shanters, holding knotted walking sticks and bagpipes.

Respondent's products are sold under the trade name "McGregor Manufacturing Co.," which is the name used for its manufacturing establishment at Summit, N. J., and the word "McGregor" appears on the cloth labels attached to said products. All of respondent's sweaters contain a cloth label bearing the word "McGregor," and said

sweaters are sold under such British and Scotch trade names as Yorkshire Quad, Shetlane, Dunvee, Cash-Mon, Bonnie Lamb, Yardelle, Heather Vee, Yardho, Duncan, Yardwood, Scotchshire, Ryder Vest Scot, Vagabond Dale, Tweedmoor, Lochmoor and Bowslip. Only a very few of the above brand-named sweaters are imported from the British Isles. The bulk of said sweaters are manufactured in the United States.

On respondent's letterheads, labels, tags, wrappers, boxes, catalogs, and other types of advertising matter, respondent features scotch-plaid designs, such as scotch-plaid borders on its letterheads and wrappers, the term McGregor, a picture of a Scottish knight or warrior dressed in kilts of scotch plaid and bearing a shield and sword.

PAR. 5. In truth and in fact, only a very small percentage of respondent's products are imported from the British Isles. The bulk of it is manufactured in the United States.

PAR. 6. There is a demand among the purchasing public in the United States for articles of wearing apparel, particularly woolens, imported from the British Isles. That demand is based on a belief among said purchasing public that such wearing apparel is of superior quality and workmanship.

PAR. 7. The use by the respondent of the aforesaid acts and practices has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public with reference to the origin of said products and as a result of said deception, substantial quantities of respondent's said products have been purchased.

PAR. 8. Among the products offered for sale and sold by the respondent in commerce as aforesaid are some which were composed wholly or in part of rayon.

PAR. 9. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and appearance. Garments manufactured from fabrics composed of rayon have the appearance and feel of silk, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk, the product of the cocoon of the silkworm. Consequently, such garments are readily accepted by some members of the purchasing public as silk products.

PAR. 10. Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held and are still held in great public esteem because of their outstanding qualities, and there

Complaint

43 F. T. C.

has been for many years, and still is, a public demand for such products.

PAR. 11. The respondent manufactures and sells in commerce, as aforesaid, garments composed wholly or in part of rayon, which garments simulate in texture and appearance garments composed wholly or in part of silk, the product of the cocoon of the silkworm. Respondent does not inform the purchasing public of the fact that the garments, which resemble silk in texture and appearance, are made wholly or in part of rayon and not of silk.

PAR. 12. The practice of the respondent in offering for sale and selling said garments, manufactured wholly or in part of rayon, which resemble in texture and appearance garments manufactured from silk, in commerce as aforesaid, without disclosing in words familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, is misleading and deceptive, and many members of the purchasing public are thereby led to believe that the said garments are composed wholly or in part of silk, the product of the cocoon of the silkworm.

PAR. 13. The use by respondent of the acts and practices hereinabove described has the capacity and tendency to mislead and deceive and does mislead and deceive wholesalers and retailers who purchase respondent's said garments as to the fiber content thereof. By said acts and practices respondent also places in the hands of purchasers of its products for resale a means and instrumentality whereby they may and do mislead and deceive the purchasing public as to the fiber content of said products. As a result of this deception, substantial quantities of respondent's products are purchased in the belief that they are composed wholly or partly of silk, the product of the cocoon of the silkworm.

PAR. 14. Respondent is 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 said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 15. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were articles of wearing apparel, such as sweaters, sport coats, and other garments. Exemplifying respondent's practice of violating said act and the rules and regulations promulgated thereunder is its misbranding of the aforesaid garments in violation of the provisions of said act and said rules and regulations by failing to affix to said garments 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. 16. Among the said wool products sold and distributed by respondent in commerce as aforesaid, and among the wool products manufactured for introduction into said commerce, are sweaters and other garments which bear conflicting labels. Said sweaters and other garments have attached thereto labels purporting to contain the information required by the Wool Products Labeling Act; that is, labels showing, among other things, the percentages of wool, reprocessed wool, or reused wool contained in said garments. In addition to said cardboard tags or labels are cloth labels attached to said garments containing such expressions as the following:

CASH-MON
Wool & Cashmere
SHETLANE
Lamb's Wool
& Kid Mohair
WOOL &
CAMEL'S HAIR

The use on the same garment of the cardboard label which states the purported percentages and kinds of wool of which the garment is composed, and the cloth label which states that said garments are composed of different kinds of wool fibers without giving the percentages thereof, has the capacity and tendency to confuse and deceive, and does confuse and deceive, the purchasing public as to the fiber content of said garments and constitutes misbranding and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 17. In addition to the acts and practices hereinabove set forth, the respondent has improperly labeled some of its wool products offered for sale, sold, and distributed in commerce as aforesaid by placing on said products perforated tags, labels, or other means of identification that contain the statement "Detach for Stock Control." Other of respondent's said wool products bear tags, labels, or other marks of identification in which all or part of the required information contained thereon has been rendered illegible or obscure by crowding, intermingling, or superimposing thereon other marks, figures, and statements. The aforesaid acts and practices are in violation of the rules and regulations promulgated under the Wool Products Labeling Act of 1939.

PAR. 18. The acts, practices, and methods of respondent as alleged in paragraphs 14, 15, 16, and 17 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 aforesaid acts, practices, and methods as alleged herein 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.

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 May 8, 1944, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939. After the respondents filed its answer to the complaint a stipulation as to the facts was entered into between counsel representing the Federal Trade Commission and the respondent, by which it was agreed that, subject to the approval of the Federal Trade Commission,

said stipulated facts may be taken as the facts in this proceeding 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 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. 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 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, David D. Doniger & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of New York. Its principal office and place of business is at 303 Fifth Avenue, New York 16, N. Y.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in manufacturing and selling various kinds of wearing apparel, commonly classified as sportswear. Respondent operates manufacturing plants at 430 Morris Avenue, Summit, and Dover, N. J. At its plant in Summit, N. J., it manufactures various kinds of sportswear. Respondent also sells sweaters to the general public, such sweaters being styled and designed, and the production thereof being supervised, by the respondent. It also buys sweaters manufactured for it by various sweater manufacturers which it resells. Some of said products, when sold by it, are caused to be transported from its place of business in New York or from one of its places of business in New Jersey to various purchasers of said products at their respective points of location in the various States of the United States and in the District of Columbia. Respondent maintains in some instances, and at all times mentioned herein has maintained in some instances, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's products are sold under the name "McGregor" which respondent has used as a trade-mark to distinguish its products since 1922. Said products have been extensively advertised and sold by respondent under its said trade-mark "McGregor" since the aforesaid date and respondent is known familiarly to the trade and public as "The McGregor Co.," and said trade-mark appears on cloth labels

attached to said products, usually in association with the word "Sportswear" and a red and green border design.

PAR. 4. Respondent's sweaters are sold in a variety of styles and fabrics and are identified by such trade names as "Yorkshire Quad," "Shetlane," "Bonnie Lamb," "Heather Vee," "Scotchshire," "Ryder Vest Scot," "Tweedmoor," and "Lochmoor." All of said sweaters sold under said trade names are made in the United States.

Respondent's letterheads, labels, tags, wrappers, boxes, catalogs, and other forms of advertising matter usually display a green and red plaid and, in some instances, a fanciful design in the nature of a coat of arms. Respondent in its advertising also has used a picture of a Scottish knight or warrior dressed in kilts of Scotch plaid and bearing a shield and sword.

One of the four rooms in respondent's showrooms at 303 Fifth Avenue, New York City, was constructed 20 years ago as a replica of a room in an English castle, with heavy brown wooden beam jutting from the walls at regular intervals, with colored old-fashioned lanterns hanging from some of the beams, Scottish appearing shields and coats of arms painted at various places on the walls, pictures depicting Scotchmen dressed in shawls, kilts, and tam-o'-shanters, holding knotted walking sticks and bagpipes. The room has been modernized from time to time, and for 5 years many of the old fixtures have been removed and photographs of sportswear and murals have been put on the wall. The pictures are changed frequently, and the mural annually; at present it represents an architect's conception of the modern sportswear department of a store. Said room is still adorned with many of the original fixtures and paintings enumerated above. The other three rooms are modern, and there is a large photograph of respondent's Dover, N. J., plant at the entrance to the showroom. The showrooms are used only in connection with wholesale trade; no products are sold there at retail. Since June 1944, all of respondent's advertising, literature, price tags, and the like, have had stated in prominent letters, "Sportswear Made in U. S. A."

PAR. 5. A very small percentage of respondent's products have been and are now imported from the British Isles. All imported products have been and are clearly described as such.

PAR. 6. There is a demand among the purchasing public in the United States for articles of wearing apparel, particularly woolens, imported from the British Isles.

PAR. 7. The use of obviously British- or Scotch-sounding trade names by respondent to designate products not imported from the British Isles has the tendency and capacity to mislead and deceive

purchasers and prospective purchasers as to the actual country of origin of said products. Respondent's trade names "Scotchshire," "Ryder Vest Scot," "Yorkshire Quad," and "Shetlane" fall within this classification. Likewise, the use of trade names which have some British or Scotch connotation or association also has the capacity and tendency to mislead and deceive purchasers and prospective purchasers as to the actual country of origin of said products unless there is prominently stated in connection with any such name the country in which the product is made. Respondent's trade names "Bonnie Lamb," "Heather Vee," "Lochmoor," and "Tweedmoor" fall within this classification. The use in connection with domestic products of advertising material, letterheads, billheads, tags, labels, boxes, wrappers, and the like containing pictures, designs, and symbols connoting and suggesting British or Scotch origin has the tendency and capacity to mislead purchasers and prospective purchasers as to the country of origin of such products, unless in connection with such pictures, designs, and symbols the actual country of origin is clearly and conspicuously disclosed.

PAR. 8. Among the products offered for sale and sold by the respondent in commerce, as aforesaid, are some which are composed wholly or in part of rayon.

PAR. 9. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate silk fibers in texture and appearance and fabrics manufactured from such rayon fibers simulate silk fabrics in texture and appearance. Some garments manufactured from fabrics composed of rayon have the appearance and feel of silk, and many members of the purchasing public are unable to distinguish between such rayon garments and garments manufactured from silk, with the consequence that such garments are accepted by some members of the purchasing public as silk products.

PAR. 10. Products manufactured from silk have for many years been held and are still held in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

PAR. 11. Respondent manufactures and sells in commerce, as aforesaid, garments composed wholly or in part of rayon, which simulate in texture and appearance garments composed wholly or in part of silk. Respondent on some occasions and in connection with some products did not adequately inform the purchasing public of the fact that said garments which resembled silk in texture and appearance were made wholly or in part of rayon and not of silk.

PAR. 12. The practice of the respondent in offering for sale and selling said garments, manufactured wholly or in part of rayon, which

resemble in texture and appearance garments manufactured from silk, in commerce, as aforesaid, without disclosing in words familiar to the purchasing public the fact that said garments are composed wholly or in part of rayon, has the capacity and tendency to mislead a substantial portion of the public as to the fiber content thereof.

PAR. 13. Such practices also has the capacity and tendency to mislead and deceive wholesalers and retailers who purchase respondent's said garments as to the fiber content thereof. Respondent thus places in the hands of purchasers of its products for resale a means and instrumentality whereby they may mislead the purchasing public as to the fiber content of said products.

PAR. 14. Respondent is 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 violated the provisions of said act and said rules and regulations in the introduction and manufacture for introduction into commerce, and in the sale, transportation, and distribution of said wool products in said commerce, by causing some of said wool products to be misbranded within the intent and meaning of said act and the rules and regulations.

PAR. 15. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce, as aforesaid, were articles of wearing apparel, such as sweaters, sport coats, and other garments. Respondent's practice of violating said act and the rules and regulations promulgated thereunder was (A) its failure to affix to said garments 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 name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a

seller of the product, or the name of one or more persons subject to section 3 of said act with respect to such wool product; (B) its introduction into said commerce of sweaters and other garments which bore conflicting labels, which said sweaters and other garments had attached thereto labels purporting to contain the information required by the Wool Products Labeling Act; that is, labels showing, among other things, the percentages of wool, reprocessed wool, or reused wool contained in said garments, and in addition had attached cloth labels containing such expressions as the following:

CASH-MON
Wool & Cashmere
SHETLANE
Lamb's Wool &
Kid Mohair
Wool &
CAMEL'S HAIR;

(C) its use of perforated tags, labels, or other means of identification that contain information required by the act and the rules and regulations on the portion of the tag, label, or other means of identification which contained the statement "Detach for Stock Control"; (D) its use of tags, labels, or other marks of identification in which all or part of the required information contained thereon had been rendered illegible or obscured by crowding, intermingling, or superimposing thereon other marks, figures, and statements.

The use on the same garments of the labels containing the information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and cloth labels containing the statements "Wool and Cashmere," "Lamb's wool and kid mohair" and "Wool and Camel's Hair" has the capacity and tendency to confuse and deceive the purchasing public as to the fiber content of said garments and is a violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. Said garments which bear the conflicting labels referred to above are misbranded in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder in that the cloth label does not show the information required in clauses "(a)", "(b)", and "(c)" above.

CONCLUSION

The acts and practices of respondent, as found in paragraphs 14 and 15 hereof, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated there-

under, and all of the acts and practices of respondent, as herein found, 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 respondent, and a stipulation as to the facts entered into between counsel for the Commission and counsel for the respondent, which provides, among other things, that the Commission may issue and serve upon respondent 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 its conclusion that respondent has violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

I. *It is ordered*, That respondent, David D. Doniger & Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "Yorkshire Quad," "Shetlane," "Scotchshire," or "Ryder Vest Scot" or any other term obviously denoting British or Scotch origin, to designate or describe products which are not in fact made in the British Isles.

2. Using the terms "Bonnie Lamb," "Heather Vee," "Tweedmoor," or "Lochmoor," or any other term connoting or suggesting British or Scotch origin, to designate or describe products not made in the British Isles, unless in connection with such terms there appear other words clearly and conspicuously disclosing the country of origin of such products.

3. Using pictures, designs, or symbols connoting or suggesting British or Scotch origin in connection with products not made in the British Isles unless such pictures, designs, or symbols are accompanied by words clearly and conspicuously disclosing the country of origin of such products.

4. Advertising, offering for sale, or selling products composed in whole or in part of rayon without clearly disclosing such rayon content; and when such products are composed in part of rayon and in part of other fibers or materials, all of such fibers or materials, including the rayon, shall be clearly and accurately disclosed.

II. *It is further ordered*, That said respondent, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wearing apparel 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, do forthwith cease and desist from misbranding such apparel or other products by failing to affix securely 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 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 is 5 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such product of any nonfibrous loading, filling, or adulterating matter;

(c) The name of the manufacturer of such product; or the manufacturer's registered identification number and the name of a seller of such product; or the name of one or more persons introducing such 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, however*, That when such product is composed in whole or in part of any of the specialty fibers named in section 2 (b) of the Wool Products Labeling Act of 1939, the name of any such specialty fiber may be used in place of the word "wool" on the stamp, tag, label, or other means of identification affixed to such product, in identifying the percentage of the product composed of such specialty fiber: *And provided further*, That when the name of a specialty fiber is used, such fiber shall not be described by any other name on said label or on any other stamp, tag, label, or other means of identification affixed to such product.

Provided further, 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.

III. *It is further ordered*, That said respondent and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from placing on any tag, label, or other means of identification purporting to contain the information required by said act, the statement "Detach for Stock Control," or any statement suggesting the removal of such tag, label, or other means of identification.

IV. *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.

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

SAMUEL SMITH, ABRAHAM WEINSTEIN, AND AARON SMITH, TRADING AS IDEAL MAIL ORDER CO. AND SMITH & STRICKLAND TRADING CO.

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

Docket 5246. Complaint, Nov. 9, 1944—Decision, Apr. 28, 1947

When used hats having the appearance of new hats are offered to the public without being clearly and conspicuously labeled as used or second-hand hats, they are readily accepted by members of the public as being new products.

Where three partners engaged in the sale and distribution of second-hand wearing apparel and other merchandise direct to the consuming public by mail order, and also in sale of such merchandise to retail dealers under a separate trade name; through catalogs and circulars—

- (a) Represented falsely that their second-hand merchandise was offered to the purchaser-consumer at bankrupt and close-out prices; when in fact they operated their business on a margin of profit;
- (b) Represented falsely that they had for many years been a style and fashion leader, made the hats sold by them, sold direct from factory to purchaser-consumer, and saved their customers the middleman's or jobber's profit; the facts being they dealt almost entirely in second-hand clothing, had no factory, and did not save purchasers the middleman's profit;
- (c) Represented that they had buying connections throughout the Nation that enabled them to supply quality merchandise; when in fact they procured all their merchandise in New York City; and

Where said partners, engaged as aforesaid, and in the purchase of old, worn, or previously used hats, which they had cleaned, dyed, and blocked, and to which, whenever necessary, they added new trimmings, sweatbands, and linings, so that they had the appearance of new—

- (d) Sold such hats to retailers and to the public, with no label or marking stamped thereon or attached thereto to indicate to the buyers that they were in fact used or second-hand products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce it to purchase substantial quantities of their products; and with the effect, as respects said used hats, of placing in the hands of retailers an instrumentality whereby they were able to mislead and deceive the purchasing public:

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

In a proceeding in which it appeared that partner respondents falsely and misleadingly represented their second-hand merchandise as offered at bankrupt and close-out prices, themselves as style and fashion leaders for many years, as makers of the hats sold by them, etc., and as having buying connections