

Complaint

IN THE MATTER OF

**HARRY BANK AND HENRY BANK, DOING BUSINESS AS
HARRY BANK & SON, AND BEN BANK, DOING BUSINESS
AS BANKO CLOTHES**

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 5510. Complaint, Sept. 3, 1947—Decision, Mar. 12, 1948

Where two individuals respectively engaged in the manufacture for introduction, and the introduction, into commerce, of men's trousers composed in whole or in part of reprocessed wool or reused wool as defined in the Wool Products Labeling Act of 1939 and, as such, subject to the provisions of said act and to the rules and regulations promulgated thereunder—

Sold substantial quantities of the aforesaid wool products which were misbranded in violation of the aforesaid act and rules and regulations, 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, and wool fiber, and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller:

Held, That such acts and practices were in violation of the provisions of said Wool Products Labeling Act and the rules and regulations thereunder, and were all 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. for the Commission.

Mr. Nathan L. Posner, of Philadelphia, Pa., for Harry Bank and Henry Bank.

Mr. Herman Berlin, of Baltimore, Md., for Ben Bank.

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 Harry Bank and Henry Bank, individuals doing business as Harry Bank & Son, and Ben Bank, an individual doing business as Banko Clothes, 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, Harry Bank and Henry Bank, are individuals trading and doing business as Harry Bank & Son, with their principal office and place of business located at 224 Market Street in the city of Philadelphia, Pa. Respondent, Henry Bank, is manager of the business of Harry Bank & Son. Respondent, Ben Bank, is an individual trading and doing business as Banko Clothes, with his office and principal place of business located at 4103 Barrington Road, Baltimore 7, Md. Respondents, Harry Bank and Henry Bank, are engaged in the manufacture for introduction into commerce, and these said respondents and respondent, Ben Bank, are engaged in the introduction into commerce, and in the sale, distribution, and transportation in commerce of wool products as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

PAR. 2. Respondents' said wool 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, respondents have violated the provisions of said act and said rules and regulations in the manufacture for introduction, and in the 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 said rules and regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents, Harry Bank and Henry Bank, and introduced into commerce, sold, transported, and distributed in commerce, by respondents, Harry Bank, Henry Bank, and Ben Bank, are men's trousers or pants. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool 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 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 content 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.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, 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 September 3, 1947, issued and subsequently served on Henry Bank, an individual trading and doing business as Harry Bank & Son, and Ben Bank, an individual trading and doing business as Banko Clothes, its complaint in this proceeding, charging said respondents and the respondent, Harry Bank, an individual, with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said acts. After the issuance of said complaint the respondents, Henry Bank and Ben Bank, filed separate answers thereto, in which they each admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to said facts, and in which Henry Bank stated that his father, Harry Bank, died on July 10, 1947. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answers thereto; 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. The respondent, Henry Bank, is an individual trading and doing business as Harry Bank & Son, with his office and principal place of business located at 224 Market Street in the City of Philadelphia, State of Pennsylvania. The respondent, Harry Bank, was formerly associated with Henry Bank in this business, but he is now deceased. The respondent, Ben Bank, is an individual trading and doing business as Banko Clothes, with his office and principal place of business located at 4103 Barrington Road, Baltimore 7, Md.

Respondent, Henry Bank, is engaged in the manufacture for introduction into commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of various articles of wearing apparel, and both respondent, Henry Bank, and respondent, Ben Bank, are engaged in the introduction into commerce and in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of these products. Each of said respondents maintains and has maintained a course of trade in said products in commerce among and between the various states of the United States.

PAR. 2. Among the articles of wearing apparel manufactured for introduction into commerce by respondent, Henry Bank, and sold and distributed in commerce by respondent, Henry Bank, and respondent, Bank, as aforesaid, are men's trousers or pants, which are wool products within the intent and meaning of the Wool Products Labeling Act of 1939 in that such trousers or pants are composed in whole or in part, of wool, reprocessed wool, or reused wool as those terms are defined in said act. Such products are therefore subject to the provisions of said act and to the rules and regulations promulgated thereunder.

PAR. 3. Substantial quantities of the aforesaid wool products which have been manufactured for introduction into commerce by respondent, Henry Bank, and introduced into commerce and sold and distributed in commerce by respondent, Henry Bank, and respondent, Ben Bank, since July 15, 1941, have not had on or affixed to them a stamp, tag, label, or other means of identification or a substitute therefor, 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 if 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 any nonfibrous loading, filling or adulterating matter; (c) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a subsequent seller or reseller of the product as provided for in the rules and regulations promulgated under said act, or the name of one or more persons subject to section 3 of the act with respect to such wool product; (d) in plainly legible words and figures, the percentages by weight of the wool contents of such wool product where it contains fibers other than wool. Because of the absence of such a stamp, tag, label, or other means of identification, such wool products were misbranded in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The aforesaid acts and practices of the respondents in manufacturing for introduction, and introducing into commerce, and in selling, transporting, and distributing in commerce, of wool products which were misbranded within the meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder were and are in violation of the provisions of said act and said rules and regulations, and were and 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, Henry Bank and Ben Bank (respondent, Harry Bank, having died on June 10, 1947), in which answers these respondents admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents, Henry Bank and Ben Bank, have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Henry Bank, an individual trading and doing business as Harry Bank & Son, or trading under any other name, and the respondent, Ben Bank, an individual trading and doing business as Banko Clothes, or trading under any other name, and these respondents' agents, representatives, and employees,

directly or through any corporate or other device, in connection with the manufacture for introduction, or introduction, into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of men's trousers or pants, 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, do forthwith cease and desist from misbranding such 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 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 products of any nonfibrous loading, filling, or adulterating matter.

(C) The name of the manufacturer of such wool product; or the manufacturer's registered identification number and the name of a seller of such wool product; or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided, further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or the rules and regulations promulgated thereunder.

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

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to the respondent Harry Bank.

Syllabus

IN THE MATTER OF

AMERICAN DIETETIC CO., INC., JOSEPH G. SPITZER AND
MARVIN SMALL

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

Docket 5070. Complaint, Oct. 28, 1943—Decision, Mar. 19, 1948

A categorical representation by the advertiser-seller of a product that certain designated symptoms or conditions were likely to be due to a cause for which said advertiser-seller's product was beneficial, when in fact in the majority of cases such symptoms or conditions are due to causes in the treatment of which the product advertised would have no benefit whatever, is clearly false and obviously deceptive, and the Commission is of the opinion that a representation to the same effect, made under the same circumstances, except by suggestion instead of categorically, and unaccompanied by an appropriate disclosure of the likelihood of other causes of the symptoms and conditions, is equally false and deceptive, and, by reason of such falsity, is subject to the exercise of the Commission's corrective jurisdiction in the same manner and to the same extent as though the representation had been made by affirmative statement.

As respects the necessity for disclosure in cases in which an advertiser-seller through suggestion represents that certain symptoms or conditions not only may be due to the cause for which the advertiser-seller's product is beneficial, but also that there is likelihood that they are in fact due to such cause, when in the majority of cases the symptoms or conditions are due to causes in the treatment of which the product advertised would have no benefit whatsoever, the Commission is of the opinion that, as respects the necessity for disclosure in such cases, there is sound reason for distinguishing between those cases in which products are recommended for the cure or treatment of symptoms or conditions, and those in which it is represented merely as an effective preventive thereof, since, in the case of the former, the advertisement is directed to persons who are already ill or so consider themselves, and usually have or are under the impression that they have one or more of the symptoms referred to in the advertisement; whereas, in the case of the latter; i. e., where the product is represented only as a preventive, the advertisement is directed presumably to those who are well and who would not have, or think they have, any of the symptoms mentioned, and are in a better position properly to appraise the representation, and will not be so easily misled as those who are already ill.

The skin, as respects special preparations claimed to produce a clear, youthful complexion, or otherwise improve the appearance thereof, is affected by the processes of aging, and consequent effects thereon will not be averted or postponed by their use. Said appearance is dependent upon many factors of which the fundamental are the inherent qualities of the skin and the physiological processes of the body, and if said factors are not such as to supply the essential foundation for a clear or youthful complexion, one