

Complaint

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IN THE MATTER OF

ALEXANDER CONN AND LIONEL CONN DOING BUSINESS AS CONN'S CLOTHIERS

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

Docket 5716. Complaint, Dec. 2, 1949—Decision, May 10, 1950

Where two individuals engaged in selling to the general public from their store, wool products composed in whole or in part of "wool," "reprocessed wool," or "reused wool" as defined in the Wool Products Labeling Act, including men's wearing apparel and other garments which they purchased from manufacturers both in other States and their own, and which they sold to purchasers in other States—

- (a) Sold some of the aforesaid wool products which were misbranded in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, in that there was not affixed to them the required stamp, tag, label, or other means of identification showing the percentage of wool and nonwool fiber and aggregate, including filling or adulterating matter, and identification of the manufacturer or seller; and
- (b) With intent to violate said act and rules, etc., removed and mutilated and caused and participated in the removal and mutilation, after receipt of products concerned and prior to their offer or sale, of such stamps, etc., which had been affixed to said wool products by the manufacturer or other authorized person, and did not replace them with substitute stamps, etc.;

With the result that the products concerned, when offered and sold by them to the general public, did not have affixed thereto stamps, etc., containing the information required by law:

Held, That said acts, practices, and methods, under the circumstances set forth, were in violation of said Wool Products Labeling Act and 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 for the Commission.

Spengler, Nathanson, Hebenstreit & Heyman, of Toledo, Ohio, for respondents.

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 Alexander Conn and Lionel Conn, doing business as Conn's Clothiers, 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, Alexander Conn and Lionel Conn, doing business as Conn's Clothiers, have their place of business at 242 South Saginaw Street, Flint, Mich. They are engaged in the sale of men's wearing apparel.

PAR. 2. Respondents are now and for several years last past have been operating a store at the aforesaid address, selling to the general public wool products, as such products are defined in the Wool Products Labeling Act of 1939, in that said products are composed in whole or in part of wool, reprocessed wool or reused wool, as those terms are defined in said act.

PAR. 3. During all the time aforementioned, the respondents have purchased and are now purchasing said wool products from various manufacturers located in States other than the State of Michigan, and have caused and are now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through respondents reach the ultimate purchaser-consumer in a State other than the State of manufacture or first introduction into such commerce. Respondents also purchase said products from various manufacturers located in the State of Michigan who manufacture such products for introduction into said commerce.

Said wool products transported in commerce as aforesaid and said wool products manufactured for introduction into said commerce are thereafter offered for sale and sold by respondents to the general public at their said place of business. Said products are offered for sale and some are sold to purchasers residing in States other than the State of Michigan and shipped to said purchasers at their respective points of residence from respondents' place of business in Flint, Mich.

PAR. 4. Among the wool products purchased and transported in commerce as aforesaid and also among the wool products manufactured for introduction into said commerce and thereafter offered for sale and sold by respondents as aforesaid since July 15, 1941, were men's wearing apparel and other garments. All of said wool products purchased and transported in commerce as aforesaid, and all of said wool products manufactured for introduction into said commerce, were subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when offered for

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sale and sold by respondents, in that said products, when offered for sale and sold by respondents, did not have affixed thereto a stamp, tag, label, or other means of identification 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 subsequent 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; (d) the percentage in words and figures plainly legible, by weight of the wool contents of said wool product where said wool product contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondents at their said place of business, had affixed thereto stamps, tags, labels, or other means of identification purporting to contain the information required by the Wool Products Labeling Act of 1939. After said wool products were delivered to the respondents at their said store and place of business as aforesaid, and before said wool products were offered for sale or sold by respondents to the general public, said respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did mutilate, and participate in and cause the mutilation of, the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to said wool products by the manufacturer thereof or by some person authorized or required by said Act to affix such stamps, tags, labels, or other means of identification to said wool products.

PAR. 7. Said respondents did not replace said stamps, tags, labels, or other means of identification with substitute stamps, tags, labels, or other means of identification containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder. As a result of respondents' said acts and practices in mutilating said stamps, tags, labels, or other means of identification affixed to said wool products, said wool products, when offered for sale and sold by respondents to the general public at their said store and place of business, did not have affixed

thereto stamps, tags, labels, or other means of identification containing the information required by said act and said Rules and Regulations.

PAR. 8. The aforesaid acts, practices, and methods of the respondents, as herein 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 December 2, 1949, issued and thereafter served upon the respondents, Alexander Conn and Lionel Conn, individuals trading as Conn's Clothiers, its complaint in this proceeding, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. On December 23, 1949, the respondents filed their answer to said complaint, but on February 9, 1950, they filed a motion to be permitted to withdraw said original answer and in lieu thereof to substitute an answer dated January 10, 1950, which was annexed to said motion, and on February 9, 1950, the substitute answer was received and filed. In said substitute answer the respondents, for the purposes of this proceeding, 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint of the Commission and the respondents' substitute answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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. Respondents, Alexander Conn and Lionel Conn, are individuals trading and doing business as Conn's Clothiers, with their place of business located at 242 South Saginaw Street, in the city of Flint, State of Michigan.

PAR. 2. Respondents are now and for several years past have been operating a store at the aforesaid address selling to the general public "wool products," as such products are defined in the Wool Products Labeling Act of 1939, in that said products are composed in

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whole or in part of "wool," "reprocessed wool" or "reused wool," as those terms are defined in said act.

PAR. 3. During all of the time mentioned herein, respondents have purchased and are now purchasing said wool products from various manufacturers located in States other than the State of Michigan, and they have caused and are now causing such products to be transported in commerce through regular and continuous channels of trade in which such products through the respondents reach the ultimate purchasers in States other than the State of manufacture or the State where such products were first introduced into commerce. Respondents also purchase some of said wool products from various manufacturers located in the State of Michigan who manufacture such products for introduction into commerce.

The wool products transported in commerce and manufactured for introduction into commerce, as aforesaid, are thereafter offered for sale and sold by the respondents to the general public at their place of business in the city of Flint, State of Michigan. Such products are offered for sale and some are sold to purchasers residing in States other than the State of Michigan, and when so sold are shipped to said purchasers at their respective points of residence from respondents' place of business in Flint, Mich.

PAR. 4. Among the wool products purchased and transported in commerce and manufactured for introduction into commerce and thereafter offered for sale and sold in commerce by respondents, as aforesaid, since July 15, 1941, have been men's wearing apparel and other garments. All of said wool products have been subject to the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

PAR. 5. Some of the aforesaid wool products, when offered for sale and sold by respondents, have been misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that said products did not have on or affixed to them a stamp, tag, label, or other means of identification, or a substitute therefor, showing (a) the percentage of the total fiber weight of the wool products, 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 such wool product of any nonfibrous loading, filling, or adulterating matter; (c) the name or registered identification number of the manufacturer of the wool product or 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; (d) the percentage, in words and figures plainly legible, by weight of the wool content of said wool product where it contained a fiber other than wool.

PAR. 6. The aforesaid wool products, when received by respondents at their place of business, had affixed to them stamps, tags, labels, or other means of identification, purporting to contain the information required by the Wool Products Labeling Act of 1939. After such products were delivered to respondents and before they were offered for sale or sold by respondents to the general public, respondents, with intent to violate the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, did mutilate, participate in and cause the mutilation of the stamps, tags, labels, or other means of identification which purported to contain the information required by the provisions of said act and said rules and regulations affixed to such products by the manufacturer thereof or by some person authorized or required by said act to affix such stamps, tags, labels, or other means of identification to said products.

PAR. 7. Respondents did not replace said stamps, tags, labels, or other means of identification, with substitute stamps, tags, labels, or other means of identification, containing the information required under the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder. As a result of respondents' mutilation of said stamps, tags, labels, or other means of identification affixed to said wool products, such products, when offered for sale and sold by the respondents to the general public, did not have on or affixed to them stamps, tags, labels, or other means of identification, containing the information required by said act and the rules and regulations promulgated thereunder.

CONCLUSION

The aforesaid acts, practices, and methods of respondents as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondents, in which answer said respondents admitted all of

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the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

It is ordered, That the respondents, Alexander Conn and Lionel Conn, individually and trading as Conn's Clothiers, or trading under any other name, jointly or severally, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, transportation or distribution in commerce, as "commerce" is defined in the aforesaid acts, of men's wearing apparel or any 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 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 products, 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 or registered identification number of the manufacturer of such wool products or of one or more persons introducing such wool products 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.

(d) In the case of a wool product containing a fiber other than wool, the percentages, by weight, in words and figures plainly legible, of the wool contents thereof.

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.

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It is further ordered, That said respondents and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale or distribution of men's wearing apparel or any other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from causing or participating in the mutilation of any stamp, tag, label, or other means of identification, affixed to any such "wool product" pursuant to the provisions of the Wool Products Labeling Act of 1939, with intent to violate the provisions of said act, and which stamp, tag, label, or other means of identification purports to contain all or any part of the information required by said act.

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.

IN THE MATTER OF
JACOB COLON AND EVELYN COLON, TRADING AS E. & J.
DISTRIBUTING CO.

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

Docket 5368. Complaint, Aug. 18, 1945—Decision, May 15, 1950

Where two individuals engaged in the competitive interstate sale and distribution of household merchandise, novelties, toiletries, and other articles; in promoting the sale of their products—

Distributed to prospective sales representatives throughout the United States advertising or sales circulars which contained pictorial and descriptive matter with respect to certain articles offered by them as compensation for the sale of their products, and depictions and descriptive matter as to articles offered for sale, and included also a list of items and the prices thereof, and adjacent thereto a pull card for use in accordance with a plan whereby the legend concealed under the tab selected and pulled by the customer determined the price he paid and the article he received; and the sales representative or operator collected and remitted the amounts thus called for; distributed to his customers the merchandise thus secured by them; and was compensated in merchandise or cash; and thereby,

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise through the aforesaid typical scheme, through which there was determined by the fortune of the draw which article each purchaser received and the amount of money he was required to pay, and whether he received an article which was of appreciable utility or value to him or met with his desires for other reasons; contrary to an established public policy of the United States Government;

With the result that many persons were attracted by their sales methods and by the element of chance involved therein, and were induced thereby to buy and sell said merchandise in preference to that offered and sold by competitors who do not use such or any equivalent methods; and with tendency and capacity to divert trade in commerce unfairly from aforesaid competitors:

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.

As respects the fact that the pull tab device involved in the foregoing proceeding contained a "notice to purchasers," which advised them that the price of an article was printed on the back of each slip and that they were privileged, if they wished to buy the article, to pay the holder of the book the price shown, and that they were not required to buy the article if they did not want it, it appearing that said notice was not ordinarily called to the attention of the prospective purchaser by the sales representative; that the successful operation of the sales plan was dependent upon the ability of the representa-