

Complaint

IN THE MATTER OF

WESTERN BATT & BEDDING CO., INC., ET AL.

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 5682. Complaint, July 15, 1949--Decision, May 24, 1950

Where a corporation and its secretary-treasurer and general manager, who dominated its affairs and was responsible for its acts and practices, engaged in the manufacture for introduction into commerce, and in the sale, transportation and distribution in commerce, of wool products as defined in the Wool Products Labeling Act—

Misbranded wool batts by failing to affix thereto stamps, tags, labels or other means of identification or a substitute in lieu thereof showing the percentage of the fiber weight of wool, fiber other than wool and other information called for under the act and rules and regulations thereunder, including the name of the manufacturer or the manufacturer's identification number, and that of a seller or reseller of the products or of one or more persons subject to sec. 5 of the act with respect thereto:

Held, That such acts and practices were in violation of the Wool Products Labeling Act 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.

Before *Mr. Abner E. Lipscomb*, trial examiner.

Mr. Jesse D. Kash for the Commission.

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 Western Batt & Bedding Co., Inc., a corporation, and Lee Brown, an individual and as an officer of the Western Batt & Bedding Co., Inc., hereinafter referred to as respondents, have violated the provisions of said acts and 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. Respondent, Western Batt & Bedding Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at Stayton, Oreg.

Respondent, Lee Brown, is secretary-treasurer and general manager of respondent Western Batt & Bedding Co., Inc., with his office and principal place of business located at Stayton, Oreg. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents Western Batt & Bedding Co., Inc., a corporation, and Lee Brown are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation and distribution 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 and introduced into commerce, sold, transported and distributed in commerce by respondents, are woolen batts. 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 five 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 was 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 non-fibrous 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 regula-

tions 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 the 15th day of July 1949, issued and subsequently served its complaint in this proceeding upon respondents Western Batt & Bedding Co., Inc., a corporation, and Lee Brown, individually and as an officer of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. After the filing of answer by respondents to said complaint, the trial examiner, theretofore designated by the Commission to perform all duties authorized by law in this proceeding, granted respondents' motion for permission to withdraw the answer previously filed and to substitute therefore an answer by respondents dated October 31, 1949, admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure, including the filing of a recommended decision by the trial examiner and further hearing as to said facts, which substitute answer was duly recorded in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint, and the substitute answer; 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, Western Batt & Bedding Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at Stayton, Oreg.

Respondent, Lee Brown, is secretary-treasurer and general manager of respondent, Western Batt & Bedding Co., Inc., with his office

and principal place of business located at Stayton, Oreg. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents, Western Batt & Bedding Co., Inc., a corporation, and Lee Brown are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation, and distribution 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 and introduced into commerce, sold, transported, and distributed in commerce by respondents, are woolen batts. 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 non-fibrous 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.

In further violation of said act and of rule 4 of the rules and regulations promulgated thereunder by the Commission as such rule existed at the time this proceeding was instituted, respondents have engaged in misbranding by failing to affix to the aforesaid wool products a

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stamp, tag, or label or other means of identification showing the name of the manufacturer or the manufacturer's identification number and the name of a seller or reseller of the products, as then provided for in said rule 4 of the rules and regulations, or the name of one or more persons subject to section 3 of the act with respect to such products.

PAR. 4. 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.

CONCLUSION

The aforesaid acts, practices, and methods of the respondents, as herein found, have been 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 answer of respondents, in which joint answer respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure, including the filing of recommended decision by the trial examiner and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939:

It is ordered, That respondents Western Batt and Bedding Co., Inc., a corporation, its officers, agents, representatives, and employees, and Lee Brown, individually, and his 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 woolen batts or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "re-used wool," as those terms are defined in said act, do forthwith cease and desist from misbranding such woolen batts, 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:

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(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 or the registered identification number of the manufacturer of such wool product, or of one or more persons engaged in introducing such wool product into commerce, or in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and in 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 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.

Syllabus

IN THE MATTER OF

AUTOMATIC CANTEEN CO. OF AMERICA

COMPLAINT, FINDINGS, ORDER AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 AND SEC. 2 (f) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4933. Complaint, March 19, 1943—Decision, June 6, 1950

Competition among the manufacturers and jobbers of candy, gum, nuts and other confectionery products is and has been such that any differential or discrimination in the price of such products of like grade and quality may result in a substantial diversion of business to those manufacturers and jobbers who grant such differential or discrimination and substantially reduce the sales of those who do not grant them.

Where a corporation engaged in (1) purchasing nationally known candy and confectionery products of standard weight and quality from many manufacturers in various States, and in reselling them to some 83 "canteen distributors" (including two which were owned or controlled by the chairman of its board and his brother and accounted for over one-third of all retail sales reported by said distributors), for resale to the public by means of automatic vending machines leased from it and located in offices, factories and other commercial establishments in 112 separate territories in 33 States and in the District of Columbia; and in (2) acquiring, owning, operating and leasing such machines—substantially all of which were in the possession of its distributors through the operation of its lease agreements with them—and developing, as a part of its primary function of selling confectionery products, the automatic retailing of such items through leased vending machines;

In leasing both the standard machines and the selective machines, which it developed and which permitted the customer to select different kinds of candy, gum or nuts, and which, as with the standard it caused to be manufactured for it by others—

- (a) Entered into exclusive dealing contracts with its said distributors which required said distributors (1) to purchase from it their requirements of confectionery and other merchandise for sale in its machines, (2) not to use or sell any merchandise thus purchased in any machine other than those leased by it, (3) not to offer or sell in such machines any merchandise not purchased from it, and (4) not to make, possess or operate any such machine not leased from it;
- (b) Prohibited its distributors, under said exclusive dealing contracts, following their termination through lapse of time or for breach of any of the aforesaid conditions, from owning, licensing, leasing, or dealing in any automatic vending machine and from selling any merchandise by means of any such machine within the territory specified for a period of five years;
- (c) Reserved to it the right to terminate without notice the lease and all interest of the distributor thereunder in the event that he failed or refused to observe and fulfill certain terms, covenants and guarantees, or defaulted