

Complaint

IN THE MATTER OF

KIMBERLEY GIRL COATS, 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 5779. Complaint, May 24, 1950—Decision, Apr. 5, 1951

Where a corporation and the two officers and directors who formulated, controlled, and directed its policies and practices, engaged in the introduction into commerce and in the offer, sale, transportation, and distribution therein of wool products subject to the Wool Products Labeling Act—

Misbranded certain ladies' coats in violation of the provisions of said act in that said coats, composed wholly or in part of reprocessed wool, were labeled by them as 100 percent wool:

Held, That such acts and practices, under the circumstances set forth, were in violation of said 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.

Mr. DeWitt T. Puckett and *Mr. Russell T. Porter* for the Commission.

Mr. George Feinberg, of New York City, 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 Kimberley Girl Coats, Inc., a corporation, and Samuel Plotkin and Leon Waisman, individually and as officers of respondent Kimberley Girl Coats, Inc., 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. The respondent, Kimberley Girl Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Its principal office and place of business are located at 270 West Thirty-eighth Street, New York, N. Y. The respondents, Samuel Plotkin and Leon Waisman, are officers and stockholders of the respondent, Kimberley Girl Coats, Inc., and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce and in offering for sale, 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 respondents' 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, respondents have 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. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in said commerce as aforesaid, were coats and other products. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid products 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 name of one or more persons subject to section 3 of said act with respect to such wool product, or the registered identification number of such person or persons as provided for in rule 4 of the regulations as amended.

PAR. 4. The aforesaid acts, practices, and methods of respondents as 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, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, on May 24, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. No answer was filed by the respondents. On August 28, 1950, a stipulation as to the facts was entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for respondents, in which it was stipulated and agreed that subject to the approval of the Commission the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding, without the presentation of argument or the filing of briefs. The Commission having served upon the respondents its tentative decision, together with leave to show cause why such tentative decision should not be entered as the final decision of the Commission, and the respondents not having appeared in response to the leave to show cause, this proceeding regularly came on for final consideration before the Commission upon the complaint 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 Kimberley Girl Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 270 West Thirty-eighth Street, New York, N. Y.

Respondents Samuel Plotkin and Leon Waisman are officers and stockholders of respondent corporation, and as such they formulate, control, and direct its policies and practices.

PAR. 2. The respondents are engaged in the introduction and manufacture for introduction into commerce, and in the offering for sale,

Order

47 F. T. C.

sale, transportation, and distribution in said commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products as such products are defined in said Wool Products Labeling Act of 1939. Many of respondents' 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. During the fall of 1949 respondents violated the provisions of said act and rules and regulations in the introduction into commerce, and in the sale, transportation, and distribution in commerce, of said wool products, by causing said wool products to be misbranded within the intent and meaning of said act and rules and regulations.

PAR. 3. Among the wool products introduced and manufactured for introduction into commerce, and sold, transported, and distributed in commerce, as aforesaid, were ladies' coats which were made wholly or in part of reprocessed wool, but which were labeled by the respondents as 100 percent wool. Said coats were thus misbranded in that they did not have affixed to them a stamp, tag, label, or other means of identification showing the constituent fibers, and percentages thereof, of such products, and other information required by the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder, and constituted 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 for a stipulation as to the facts entered into by and between Daniel J. Murphy, Chief, Division of Litigation, of the Commission, and counsel for respondents, in which stipulation the respondents 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 Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act.

1197

Order

It is ordered, That the respondents, Kimberley Girl Coats, Inc., a corporation, and its officers, and Samuel Plotkin and Leon Waisman, individually, and their respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce as "commerce" is defined in the aforesaid acts, of ladies' coats 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 "reused wool" as those terms are defined in said act, do forthwith cease and desist from misbranding such ladies' coats 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 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 offering for sale, 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 sixty (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
PACIFIC GAMBLE ROBINSON CO. ET AL.

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

Docket 5819. Complaint Oct. 18, 1950—Decision, Apr. 5, 1951

Where a corporation which was one of the largest wholesale grocers in the 15 Middle Western, Northwestern, and Far Western States in which it operated, doing an annual volume of business of about \$150,000,000, conducted its retail grocery business through subsidiary corporations including the operator of a large chain of retail grocery stores, and purchased substantially all of its requirements through a concern whose capital stock was owned by three of its stockholders and with which it was so closely integrated that the two operated in said matter as a single business enterprise—

- (a) Received from vendors from whom it purchased a substantial portion of its requirements of grocery products, commissions, brokerage, or other compensation or discounts in lieu thereof, in the form of purchasing and resale promotional services or facilities, through aforesaid intermediary concern acting for it or as its agent, which purchased said food products for its account from vendors who paid or granted said intermediary commissions, etc., in connection with said purchases; and,

Where said purchasing concern, nominally the broker for several vendors of the products purchased and sold by said corporation, but actually exclusively engaged in purchasing for the account of the latter substantially all of its requirements, from said vendors when available or, when not, from other vendors—

- (b) Received and accepted payments made to it in connection with the purchases it made for said corporation, as a result of its close integration therewith in said matter, and made use of the payments or grants so received to pay the expense of furnishing to said corporation purchasing services which had to do with the availability, quality, prices, and terms of sale of grocery products generally, and with advice which was tendered to and acted upon by said corporation as to what, when and from whom to purchase grocery products, and the prices to pay and all other matters which assured as nearly as possible that said corporation purchased its requirements of grocery products at the most favorable prices, terms and conditions; and included the advertising agency continuously employed by said intermediary:

Held, That such acts and practices of said corporation and intermediary, in receiving and in transmitting commissions, brokerage, or other compensations or allowances or discounts in lieu thereof, as above set out, were in violation of subsection (c) of the Clayton Act as amended.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Ryan, Askren & Mathewson, of Seattle, Wash., for respondents.

Stinchfield, Mackall, Crounse & Moore, of Minneapolis, Minn., also represented International Brokerage Co.