

Complaint

IN THE MATTER OF

H. T. POINDEXTER & SONS MERCHANDISE CO.

COMPLAINT, FINDINGS, AND ORDERS 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 5875. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951

Where a corporation engaged in the introduction into commerce, and in the offer, sale and distribution therein, of "wool products" as defined in the Wool Products Labeling Act of 1939—

Misbranded certain of said products in that, labeled as 100 percent wool, they contained no "wool" as defined in said act, but were composed, exclusive of ornamentation not exceeding 5 percent of their total fiber weight, of "reprocessed wool"; their constituent fibers and the percentages thereof were not shown on the tags or labels thereon, as required, since composed, as above noted, wholly of "reprocessed wool"; and constituent fibers of interlinings were not separately set forth upon the tags or labels attached thereto:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

While the complaint also charged that respondent removed from certain wool products, theretofore delivered to it, tags or labels purporting to contain the information required by said Wool Products Labeling Act, with intent to violate the provisions of the Act, and the stipulation established the fact of removal of the labels, it did not establish the element of intent, which was negatived by affidavits executed by certain of respondent's employees; and intent being an essential element where removal of labels is charged, it was concluded that said charge in the complaint was not sustained.

Before *Mr. William L. Pack*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Wm. K. Poindexter, of Kansas City, Mo., 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 H. T. Poindexter & Sons Merchandise 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:

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PARAGRAPH 1. Respondent H. T. Poindexter & Sons Merchandise Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 801 Broadway, Kansas City, Mo.

PAR. 2. Subsequent to September 1, 1949, respondent has introduced into commerce and offered for sale, sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers as 100 percent wool, whereas in truth and in fact said products contained no "wool" as the term is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of "reprocessed wool" as the term is defined in said act. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act, in the manner and form required by the said rules and regulations, since in truth and in fact said products were composed, exclusive of ornamentation, wholly of "reprocessed wool" as that term is defined in said act.

Certain of said wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth in the manner and form required by said rules and regulations upon the tags or labels attached thereto.

PAR. 4. Wool products when received by respondent at its 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 respondent and before they were offered for sale or sold by respondent to retail stores, said respondent caused and participated in the removal thereof with intent to violate the provisions of the Wool Products Labeling Act of 1939.

PAR. 5. The aforesaid acts and practices and methods of the respondent as herein alleged were in violation of sections 3, 4, and 5 of the Wool Products Labeling Act of 1939, and rules 2, 3, and 24 of 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated August 16, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

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 April 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent, H. T. Poindexter & Sons Merchandise Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing by respondent of its answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondent might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding, without presentation of proposed findings and conclusions or oral argument. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter, the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer, and stipulation (together with certain affidavits attached thereto), the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, H. T. Poindexter & Sons Merchandise Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 801 Broadway, Kansas City, Mo.

Conclusion

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PAR. 2. Subsequent to September 1, 1949, respondent has introduced into commerce and offered for sale, sold, and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

PAR. 3. Certain of such wool products were misbranded within the intent and meaning of said act and the rules and regulations promulgated thereunder, in that they were mislabeled with respect to the character and amount of their constituent fibers as 100 percent wool, whereas in truth and in fact said products contained no "wool" as the term is defined in said act, but were composed, exclusive of ornamentation not exceeding 5 per centum of their total fiber weight, of "reprocessed wool" as the term is defined in said act. The said wool products so labeled were further misbranded in that their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act, in the manner and form required by the said rules and regulations, since in truth and in fact said products were composed, exclusive of ornamentation, wholly of "reprocessed wool" as that term is defined in said act.

Certain of such wool products were misbranded in that the constituent fibers of their interlinings and the percentages thereof were not separately set forth in the manner and form required by said rules and regulations upon the tags or labels attached thereto.

PAR. 4. The complaint also charges that respondent has removed from certain wool products, theretofore delivered to it, tags or labels purporting to contain the information required by the Wool Products Labeling Act of 1939, such removal, according to the complaint, being with intent to violate the provisions of the act. While the stipulation establishes the fact of removal of the labels, the stipulation, in the examiner's opinion, fails to establish the element of intent, and affidavits executed by certain of respondent's employees negative the charge of intent. It is the examiner's understanding that where removal of labels is charged, intent is an essential element, and it is therefore concluded that this charge in the complaint has not been sustained.

CONCLUSION

The acts and practices of the respondent, as set out in paragraph 3, were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER

It is ordered, That the respondent, H. T. Poindexter & Sons Merchandise Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the offering for sale, sale 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, 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 products:

1. By using the unqualified word "wool" to designate or describe the constituent fibers of any product when such fibers are not, in fact, wool as defined in the Wool Products Labeling Act of 1939.

2. 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 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 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.

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.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein 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 the order to cease and desist [as required by said declaratory decision and order of August 16, 1951].

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IN THE MATTER OF

DEKLE BROKERAGE CO., INC., 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 5880. Complaint, May 7, 1951—Decision, Aug. 16, 1951

Where a corporation, and its president and stockholder, who was responsible for its acts and practices, engaged as a broker of fruits and vegetables, and as a jobber and wholesaler thereof in the purchase of such produce from vendors in other states and in its sales to wholesalers and retailers—

Received and accepted from such vendors commissions, brokerage or other compensation, of allowances or discounts in lieu thereof, in connection with purchases of produce made on respondent's own account, as jobber and wholesaler, in purchasing in their own name and for shipment to their places of business for resale:

Held, That said respondents in receiving and accepting brokerage fees, etc., from sellers under the circumstances set forth, violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, trial examiner.

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.

Howell & Johnston, of Mobile, Ala., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent, named in the caption hereof, and hereinafter more particularly designated and described, have been and are now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. Title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Dekle Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 600 North Water Street, Mobile, Ala., and with a branch office located in Jackson, Miss.

Respondent Arthur U. Dekle is an individual with principal office and place of business located at 600 North Water Street, Mobile, Ala. He is a stockholder in and president of respondent Dekle Brokerage Co., Inc. As such, he directs, controls and is responsible for the acts and practices of said corporate respondent which are hereinafter alleged.

PAR. 2. Respondents are now and for several years have been engaged in business as a broker of fruits and vegetables, hereinafter