

Complaint

48 F. T. C.

IN THE MATTER OF

HOFFMAN & DENGROVE, 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 5684. Complaint, July 20, 1949—Decision, Jan. 10, 1952

Where a corporate wholesale distributor of woolen piece goods and an individual, engaged in the offer, sale and distribution in commerce of wool products as defined in the Wool Products Labeling Act, including certain bolts of piece goods which, composed of about 50 percent wool and 50 percent viscose rayon, represented, invoiced and ticketed, as all wool, were the subject of sale in a number of transactions—

Misbranded said bolts of piece goods in that when sold and transported in commerce as aforesaid, they did not have affixed thereto a stamp, tag, label, or other means of identification showing their constituent fibers and percentages thereof and the name or registration number of the manufacturer or a subsequent seller, as provided in said Act and Rules and Regulations promulgated thereunder:

Held, That such acts and practices, under the circumstances set forth, were in violation of the provisions of said Act and Rules and constituted unfair and deceptive acts and practices in commerce.

In said proceeding, while the Commission denied respondent's appeal from the hearing examiner's initial decision, the Commission was of the opinion that said decision was deficient in that the order therein (1) was incorrectly limited to products containing or represented as containing "wool" and did not relate to products containing "reprocessed wool" or "reused wool", and (2) did not contain any requirement that the stamp, tag, label or other means of identification affixed to a wool product contain the name or registration number of the manufacturer or a subsequent seller as provided in the Act and Rules; and made findings, conclusion drawn therefrom and order in lieu of such initial decision.

Before *Mr. Randolph Preston* and *Mr. Clyde M. Hadley*, hearing examiners.

Mr. Jesse D. Kash for the Commission.

Guzik & Engel, of New York City, for Hoffman & Dengrove, Inc.

Mr. Harvey L. Gardner, of New York City, for Leon Levy.

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 Hoffman & Dengrove, Inc., a corporation,

and Leon Levy, an individual, hereinafter referred to as respondents, have violated the provision 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. Hoffman & Dengrove, 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 352 Fourth Avenue, New York, New York. Said respondent is now and for more than a year last past has been engaged in the wholesale distribution of piece goods in bolts.

Respondent Leon Levy is an individual with his office and principal place of business located at 3720 Gwynn Oak Avenue, Baltimore, Maryland. Said respondent is now and for more than one year last past has been engaged in the sale of piece goods in bolts, some of which are sold and have been sold to the aforesaid respondent, Hoffman & Dengrove, Inc.

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 piece goods in bolts. 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 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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 July 20, 1949, 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. After the filing of respondents' answers, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent Leon Levy, on motion duly granted by the hearing examiner, then withdrew his original answer and filed a substitute answer in lieu thereof admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure and hearings as to said facts. Thereafter, on January 12, 1951, a substitute hearing examiner, duly designated by the Commission, filed his initial decision herein (the original hearing examiner having retired and, therefore, being unavailable).

Within the time permitted by the Commission's rules of practice, counsel for respondent Hoffman & Dengrove, Inc., filed with the Com-

mission an appeal from said initial decision. Thereafter this proceeding regularly came on for final hearing by the Commission upon the record herein, including the briefs in support of and in opposition to the appeal and oral argument of counsel, and the Commission issued its order denying said appeal.

The Commission is of the opinion, however, that the hearing examiner's initial decision is deficient in certain respects, including (1) that the order therein is incorrectly limited to products containing or represented as containing "wool" and does not relate to products containing "reprocessed wool" or "reused wool," and (2) that the order therein does not contain any requirement that the stamp, tag, label, or other means of identification affixed to a wool product contain the name or registration number of the manufacturer or a subsequent seller of such product, as provided in the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder. Therefore, the Commission, being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Hoffman & Dengrove, 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 254 Fourth Avenue, New York, New York.

Respondent Leon Levy is an individual, with his office and principal place of business located at 3720 Gwyn Oak Avenue, Baltimore, Maryland.

PAR. 2. Respondent Hoffman & Dengrove, Inc., is now and since 1922 has been a wholesale distributor of woolen piece goods. Respondent Leon Levy in 1948 was engaged in the sale of woolen piece goods in bolts, some of which he sold to respondent Hoffman & Dengrove, Inc. Respondent Hoffman & Dengrove, Inc., is now and since 1922 has been, and respondent Leon Levy in 1948 was, engaged in the offering for sale, sale, transportation and distribution in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939 and in the Federal Trade Commission Act, of wool products 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. Such products are subject to the provisions of said Act and the Rules and Regulations promulgated thereunder.

Order

48 F. T. C.

PAR. 3. Among the wool products sold, transported, distributed and introduced into commerce by respondents were four bolts of piece goods composed of approximately 50 percent wool and 50 percent viscose rayon. These four bolts of piece goods, represented and invoiced as being all wool, were sold to respondent Hoffman & Dengrove, Inc., through an independent broker, by respondent Leon Levy, who caused them to be transported from Baltimore, Maryland, to the place of business of respondent Hoffman & Dengrove, Inc., in New York, New York. Respondent Hoffman & Dengrove, Inc., ticketed these four bolts as 100 percent wool and resold them as all wool to Rosenthal, a Philadelphia concern, and caused them to be transported from New York to Philadelphia, Pennsylvania. This purchaser, upon discovery that these goods were seconds as to quality, returned them to respondent Hoffman & Dengrove, Inc., who resold them ticketed as 100 percent wool and represented as being all wool, but of second quality, to the Mayflower Manufacturing Company, of Scranton, Pennsylvania, and caused them to be transported from New York to Scranton, Pennsylvania. Upon being informed by the Mayflower Manufacturing Company that these four bolts of piece goods had been tested by the Commission and found to be composed of approximately 50 percent wool and 50 percent viscose rayon, respondent Hoffman & Dengrove, Inc., accepted the return of these goods, refunded the purchase price, and after unsuccessfully attempting to return them to respondent Leon Levy, resold them, correctly labeled.

Said four bolts of piece goods, when sold and transported in commerce as aforesaid, were 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 promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent Hoffman & Dengrove, Inc., a corporation, and its officers, and respondent Leon Levy, an individual, 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 bolts of piece goods 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 bolts of piece goods 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 five 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 five percentum 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
FOLEY & COMPANY ET AL.

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

Docket 5515. Complaint, Nov. 20, 1947—Decision, Jan. 16, 1952

As respects a contention that an order recommended by a substitute hearing examiner would be improper and illegal in view of the fact that it was based solely upon the reading of the record by the hearing examiner who was not present at the taking of the testimony: the final responsibility for the disposition of all cases coming before the Commission, including the form of its orders to cease and desist, rests upon the Commission itself, and it has not only the right, but the duty, under the law, to reach its own conclusions on the evidence regardless of those reached by the hearing examiner, even the examiner who presided at the reception of evidence.

While the Administrative Procedure Act requires that the hearing examiner who presided at the reception of evidence must ordinarily prepare the recommended decision, an exception is made where such hearing examiner has become unavailable, as in the instant matter, in which he had retired, and in which the procedure followed by the Commission, after its due designation of a substitute hearing examiner, was in compliance with the statutory requirements.

Where a corporation engaged in the interstate sale and distribution of its "Foley's Honey & Tar Compound," through advertisements in newspapers and radio announcements—

(a) Represented that the use of said preparation as directed was a remedy or competent or effective treatment for coughs due to colds, and would check them or shorten their duration;

The facts being there is no known medication which will cure or shorten the duration of a cold or the underlying causes of a cough due thereto; and sole value of its said preparation, limited to its demulcent and mild expectorant properties, was that it might lessen the occurrence and severity of coughing spells due to a cold for not more than one-half hour from the time of taking;

(b) Represented that its use as directed supplied a therapeutic dose of terpins; when in fact the terpin hydrate content was too small to have any beneficial effect; and

(c) Falsely represented that the therapeutic value of said preparation had been proven clinically by a test made in a hospital;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true and thereby induce its purchase of said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' further contention that the substitute hearing examiner was unable to take into consideration their proposed findings of fact which