

IN THE MATTER OF
DAVID'S SPECIALTY SHOPS, INC. AND DAVID, HARRY
AND OSCAR ISRAEL

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 5852. Complaint, Feb. 21, 1951—Decision, Feb. 27, 1952

Where a corporate chain organization with several retail outlets in New York and Ohio, and its three officers—

- (a) Misbranded certain wool products in violation of the Wool Products Labeling Act through labeling them as "100% wool," when they contained in fact substantial quantities of rayon fiber;
- (b) Misbranded said products in that the constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said Act and Rules and Regulations promulgated thereunder;
- (c) Misbranded certain of said products in that the legal name of the manufacturer or other person authorized by the Act to affix stamps, etc. thereto or, in lieu thereof, a registered identification number, was not shown on the attached labels;
- (d) Misbranded certain of said products in that constituent fibers of their interlinings were not separately set forth upon the attached labels, as required by said Rules, etc.;
- (e) Misbranded certain of said products within the intent and meaning of said Act and Rule 12, in that skirts and coats sold in combination, were not labeled separately with their constituent fibers and the percentages thereof;
- (f) Misbranded certain of said products in that attached stamps, tags, etc. named fibers not present therein; and

After the delivery of certain wool products to them and shipment thereof to their retail stores in Ohio, and before offer and sale to the public; and with intent to violate the provisions of said Act—

- (g) Caused and participated in the removal, and in other cases, in the mutilation, of some of the required stamps, tags, etc. affixed to certain wool products when received by them at their place of business;

With the result that said wool products, when offered for sale and sold by them to the public at their places of business, did not bear the information required by said Act and Rules and Regulations:

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

In said proceeding in which respondents filed a substitute answer admitting all of the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to said facts; and in which the hearing examiner filed his initial decision, and counsel supporting the complaint seasonably filed an appeal and supporting brief and the Commission granted said appeal:

The Commission was of the opinion that the order to cease and desist contained in the initial decision was deficient in certain respects, in that (1) it did not prohibit respondents from removing or mutilating labels or other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939, and (2) it did not prohibit respondents from misrepresenting on such labels the character or amount of the constituent fibers contained in the wool products; it appearing that the complaint alleged and respondents' answer admitted that respondents had engaged in both of the foregoing illegal practices; and in lieu of said initial decision made its findings, etc. as below set forth.

Before *Mr. Clyde M. Hadley*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Newman & Bisco, 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 David's Specialty Shops, Inc., a corporation, and David Israel, Harry Israel, and Oscar Israel, individually and as officers of said corporation, 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. Respondent, David's Specialty Shops, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 225 West 34th Street, New York, New York. Corporate respondent is a retail store chain organization with several retail outlets located in the States of New York and Ohio.

Respondents, David Israel, Harry Israel, and Oscar Israel are president, treasurer, and secretary, respectively, of corporate respondent and in such capacities they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941, respondents have 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 the said act and the Rules and Regulations

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promulgated thereunder in that they were falsely and deceptively labeled as "100% wool," whereas in truth and in fact said products did not contain 100% wool but contained substantial quantities of rayon fiber. 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 as required by the said Rules and Regulations.

Certain of the wool products were misbranded in that the legal name of the manufacturer thereof or of a person required or authorized by said Act to affix stamps, tags or labels or other means of identification thereto, was not shown on the labels attached to its products as required by said Act and in the manner and form required by said Rules and Regulations, nor was there so shown as and for such name thereof a registered identification number as permitted by said Rules and Regulations.

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. Certain wool products when received by respondents at their 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 shipped to their retail stores located in Ohio, and before they were offered for sale or sold by respondents to the public, said respondents caused and participated in the removal of some and the mutilation of others of the said stamps, tags, labels and other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939. As a result of respondents' said acts and practices in removing and mutilating said stamps, tags, labels and other means of identification affixed to said wool products, said wool products when offered for sale and sold by respondents to the public at their places of business did not have affixed thereto stamps, tags, labels or other means of identification containing the information required by said Act and the Rules and Regulations.

Certain of said wool products were misbranded within the intent and meaning of the said Act and Rule 12 of the Rules and Regulations promulgated thereunder in that the merchandise contained two pieces, namely, skirts and coats, sold in combination which pieces were not labeled separately with the constituent fibers and the percentage thereof contained in said garments.

Certain of said wool products were misbranded in that the stamps, tags, labels or other marks of identification attached thereon named fibers not present in said garments.

PAR. 5. The aforesaid acts and practices and methods of respondents as alleged were and are in violation of Sections 3, 4 and 5 of the Wool Products Labeling Act of 1939, Rules 2, 3, 12 (a), 13, 24 and 25 of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive 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 the Commission by said Acts, the Federal Trade Commission on February 21, 1951, issued and subsequently served upon the respondents named in the caption hereof 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 said Acts. On March 23, 1951, respondents filed their answer to said complaint. On April 17, 1951, upon motion granted by a hearing examiner of the Commission, theretofore duly designated by it, respondents withdrew said original answer and filed in lieu thereof a substitute answer admitting all of the material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to said facts. Thereafter, on May 8, 1951, said hearing examiner filed his initial decision.

Within the time permitted by the Commission's rules of practice, counsel supporting the complaint filed with the Commission an appeal from said initial decision. Thereafter, this proceeding regularly came on for final hearing by the Commission upon this appeal and the brief in support thereof, and the Commission issued its order granting said appeal.

The Commission is of the opinion that the order to cease and desist contained in the initial decision is deficient in certain respects, including (1) the order does not prohibit respondents from removing or mutilating labels or other means of identification with intent to violate the provisions of the Wool Products Labeling Act of 1939, and (2) the order does not prohibit respondents from misrepresenting on such labels the character or amount of the constituent fibers contained in the wool products. The complaint alleges and respondents' answer admits that respondents have engaged in both of these illegal practices. Therefore, the Commission, being now fully advised in

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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, David's Specialty Shops, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 225 West 34th Street, New York, New York. Corporate respondent is a retail store chain organization with several retail outlets located in the States of New York and Ohio.

Respondents, David Israel, Harry Israel, and Oscar Israel are president, treasurer, and secretary, respectively, of corporate respondent and in such capacities they formulate and execute its policies and practices. Their business address is the same as that of corporate respondent.

PAR. 2. Subsequent to July 15, 1941, respondents have 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 as "100% wool," whereas in truth and in fact said products did not contain 100% wool but contained substantial quantities of rayon fiber. 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 as required by the said Rules and Regulations.

Certain of the wool products were misbranded in that the legal name of the manufacturer thereof or of a person required or authorized by said Act to affix stamps, tags or labels or other means of identification thereto, was not shown on the labels attached to such products as required by said Act and in the manner and form required by said Rules and Regulations, nor was there so shown as and for such name a registered identification number as permitted by said Rules and Regulations.

Certain of said wool products were misbranded in that the constituent fibers of their interlinings were not separately set forth in the manner and form required by said Rules and Regulations, upon the tags or labels attached to the said wool products.

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PAR. 4. Certain wool products, when received by respondents at their 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 and shipped to their retail stores located in Ohio, and before they were offered for sale or sold by respondents to the public, said respondents caused and participated in the removal of some, and the mutilation of others, of the said stamps, tags, labels and other means of identification with the intent to violate the provisions of the Wool Products Labeling Act of 1939. As a result of respondents' said acts and practices in removing and mutilating such means of identification affixed thereto, said wool products, when offered for sale and sold by respondents to the public at their places of business, did not bear the information required by said Act and the Rules and Regulations.

Certain of said wool products were misbranded within the intent and meaning of the said Act and Rule 12 of the Rules and Regulations promulgated thereunder in that the merchandise contained two pieces, namely, skirts and coats sold in combination, which pieces were not labeled separately with the constituent fibers and the percentages thereof contained in said garments.

Certain of said wool products were misbranded in that the stamps, tags, labels or other marks of identification attached thereon named fibers not present in said garments.

CONCLUSION

The aforesaid acts, practices and methods of the 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

It is ordered, That the respondent, David's Specialty Shops, Inc., a corporation, and its officers, and respondents, David Israel, Harry Israel and Oscar Israel, individually and as officers of said corporation, and their respective agents, representatives 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 ladies' skirts and coats, or other "wool products," as such products are defined in and subject to the Wool Products Labeling

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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 misrepresenting on any stamp, tag, label or other means of identification the character or amount of the constituent fibers of any of said products.

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 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, 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 constituent fibers of interlinings of such wool products, separately set forth on said identifying marks or labels attached thereto.

3. By failing to label separately each garment or separate piece of merchandise subject to said Act whether two or more such garments or pieces be marketed together or in combination with each other.

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 said respondents and their officers, representatives, agents and employees, as aforesaid, directly or through any corporate or other device, in connection with the purchase, offering for sale, sale, or distribution of "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 removal or mutilation of any stamp, tag, label, or other means

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of identification affixed to any such "wool product" pursuant to 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 herein 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.

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IN THE MATTER OF
QUAKER DISTRIBUTORS, INC. ET AL

MODIFIED CEASE AND DESIST ORDER

Docket 5673. Order, February 29, 1952

Order modifying original order of August 6, 1951, 48 F. T. C. 96, so as to require respondents, in connection with the offer, etc., of aluminum ware or other merchandise in commerce, to cease and desist from—

Representing that they are conducting a poll or survey, "unless they are in fact" so doing; or representing "that they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise"; and from making the other misrepresentations in said order below set out.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William L. Pencke for the Commission.

Sundheim, Folz, Kamsler & Goodis, of Philadelphia, Pa., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto of counsel for respondents, briefs and oral argument of counsel, the Commission, having ruled on the exceptions to the hearing examiner's recommended decision and having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on August 6, 1951, issued and subsequently served upon the respondents said findings as to the facts, conclusion, and its order to cease and desist.

Thereafter, pursuant to a motion filed by respondents, the Commission reconsidered the matter, and being of the opinion that its order should be modified in certain respects:

It is ordered, That the respondent Quaker Distributors, Inc., a corporation, and its officers, representatives, agents and employees, and the individual respondents Jack Weinstock, Nathan Loesberg, Robert Bertin, Jack Gerstel, and Louis Tafler, and their respective representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution

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of aluminum ware or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That they are conducting a poll or survey, unless they are in fact conducting a bona fide poll or survey;

2. That they are conducting a poll or survey, where the representation is made in such a manner as to initially conceal from prospective purchasers that they are engaged in the sale of merchandise;

3. That the purchasers of the said merchandise are being given a reduced price for such merchandise or any other valuable consideration as a premium or reward for their collection of box tops, clipping of advertisements, cooperation in furnishing information, or participation in any other similar project or activity;

4. That the said merchandise is being sold at a substantial discount or reduction in price when the price so charged is the usual and customary price at which they sell the said merchandise in the ordinary course of business;

5. That respondents' aluminum ware can be used for cooking foods in general without the use of water.

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this modified 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.

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IN THE MATTER OF

COVIDEO, INC. ET AL.

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

Docket 5923. Complaint, Sept. 14, 1951—Decision, Feb. 29, 1952

Where a corporation and its two officers and owners, engaged in the interstate sale and distribution of "Covideo" coin-operated television sets for use in hotels, motor courts, hospitals, and similar places; in advertising their said product in magazines and newspapers and by circulars, directly and by implication—

- (a) Falsely represented that they owned, operated or controlled a plant or factory where they manufactured coin-operated radios and television sets and component parts thereof;
- (b) Represented that said corporation was not a new company but had been in the field for several years; the facts being that, organized in July 1949, it commenced doing business in the following October;
- (c) Falsely represented that they maintained a staff of competent engineers and technicians and adequate facilities for research and experimentation in the field of television; and
- (d) Falsely represented that said staff engaged in over two years of research and experimentation in said field, the results of which were embodied in their said "Covideo" product, before its offer for sale;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such advertisements were true and thereby induce its purchase of substantial quantities of their coin-operated television sets:

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

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. John F. Walsh for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Covideo, Inc., a corporation, Sidney I. Horwatt and Louis Brown, individually and as officers of Covideo, Inc., hereinafter referred to as respondents, have violated the provisions of said Act, 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: