

Complaint

IN THE MATTER OF

GRAND ACADEMY SPORTSWEAR, 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 5860. Complaint, Mar. 23, 1951—Decision, Apr. 3, 1952

Where a corporation and two officers thereof, engaged in the manufacture and sale and distribution in commerce of wool products, as defined in the Wool Products Labeling Act, including certain ladies' skirts labeled "55% wool 45% rayon"—

- (a) Misbranded said skirts within the intent and meaning of said Act, and the Rules and Regulations promulgated thereunder, in that the aggregate of the woolen fibers therein constituted less than 55% and they contained more than 45% of rayon; and
- (b) Further misbranded said skirts in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5% of the total fiber weight:

Held, That such acts, practices and methods were in violation of said 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.

In arriving at said conclusion, due consideration was given to the protestations of good faith and the statements of respondents, contained in their answer, concerning their reputation and standing in the trade as manufacturers of clothing, which, however, were of insufficient cogency to constitute an adequate defense to the present action.

As respects the charge in the complaint that respondents substituted the incorrect tags and labels set forth for the tags which were affixed to the piece goods from which said skirts were made: Said charge was dismissed, under the circumstances and conditions of the instant proceeding, as not properly chargeable as a violation of the Wool Products Labeling Act or of the Rules and Regulations promulgated thereunder or of the Federal Trade Commission Act.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Russell T. Porter 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 Act, the Federal Trade Commission, having reason to believe that Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield, individually and as

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officers of Grand Academy Sportswear, 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 will be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Grand Academy Sportswear, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of New York State, with its office and principal place of business located at 248 West 35th St., New York, N. Y.

PAR. 2. Subsequent to October 11, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and 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. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woolen Co.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

55% wool
45% rayon

Grand Academy Sportswear Co., Inc.

PAR. 4. The said skirts are misbranded within the intent and meaning of the said Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and the amount of their constituent fibers. In truth and in fact, the said skirts were not 55% wool, as "wool" is defined in the said Act; the aggregate of the woolen fibers therein constituted less than 55% of the said skirts and they contained more than 45% of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

PAR. 5. The person by whom the piece goods, from which said skirts were made by respondents, were manufactured for introduction into commerce affixed thereto labels and tags as required by said Act containing information with respect to its fiber content as follows:

20% wool
30% reprocessed wool
50% rayon

Respondents have further violated the provisions of the Wool Products Labeling Act of 1939 by substituting for said tags and affixing

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to the said skirts tags and labels containing information set forth in Paragraph Three herein with respect to the content thereof which was not identical with the information with respect to such content upon the tags and labels as affixed to the wool product from which said skirts were made by the person by whom it was manufactured for introduction into commerce.

PAR. 6. The aforesaid acts and practices of respondents as herein alleged 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 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 April 3, 1952, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING 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 March 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield, individually and as officers of the Grand Academy Sportswear, Inc., a corporation, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of said Acts. On April 13, 1951, respondents filed their joint answer specifically admitting the misbranding of their product as charged in the complaint. Said answer alleges that labeling is performed by factory employees by use of rubber stamps showing the fiber content of various cloths used by respondents and that use of the stamp misbranding the goods as to fiber content as charged in the complaint was inadvertent and without intent on the part of respondents to mislead or deceive and that "the officers and the employees will prevent in the future such a repetition of errors." The remaining charges and the conclusions, as set forth in the complaint, are not challenged.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner, theretofore duly designated

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by the Commission, upon said complaint, the respondents' answer thereto, and Proposed Findings and Conclusions submitted by the attorney in support of the complaint, none such having been filed by the respondents. Said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Grand Academy Sportswear, 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 No. 248 West 35th Street, New York, New York; that respondents Jack Herbst and Robert Coffield are named in their individual capacities as well also as officers of the corporate respondent; that the address of both individual respondents corresponds to that of the corporate respondent.

PAR. 2. Subsequent to October 11, 1950, respondents manufactured for introduction into commerce, introduced into commerce, offered for sale in commerce and 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. The said wool products included ladies' skirts which were made by respondents from a fabric designated as "Parker-Wilder 1121," purchased from Strand Woollen Co.

PAR. 3. Upon the labels affixed to the said skirts appeared the following:

55% wool
45% rayon
Grand Academy Sportswear Co., Inc.

PAR. 4. The said skirts are misbranded within the intent and meaning of the said Wool Products Labeling Act of 1939 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. In truth and in fact, the said skirts were not 55% wool, as "wool" is defined in the said Act; the aggregate of the woolen fibers therein constituted less than 55% of the said skirts and they contained more than 45% of rayon. The said articles were further misbranded in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than five percentum of the total fiber weight.

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CONCLUSIONS

The aforesaid acts, practices and methods of respondents were and are in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, and also constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In arriving at the foregoing conclusion the Hearing Examiner has given due consideration to the protestations of good faith and statements of respondents, contained in their answer, concerning their reputation and standing in the trade as manufacturers of clothing, but such protestations and statements are of insufficient cogency to constitute an adequate defense to the present action.

ORDER

It is ordered, That the respondents, Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield as officers of said Grand Academy Sportswear, Inc., a corporation and also in their individual capacities, their respective representatives, agents and employers, 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 ladies' skirts 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 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 falsely and deceptively stamping, tagging, labeling or otherwise identifying such products;

2. By failing to securely affix 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 products, 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 products of any non-fibrous loading, filling, or adulterating matter.

(c) The name or the registered identification number of the manufacturer of such wool products or one or more persons engaged in

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introducing such wool products 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 charge of substitution of tags and labels by respondents, contained in Paragraph Five of the complaint is dismissed, such acts, under the circumstances and conditions of the instant matter, not being properly chargeable as a violation of the Wool Products Labeling Act of 1939, or of the Rules and Regulations promulgated thereunder, nor of the Federal Trade Commission Act.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 the order to cease and desist [as required by said declaratory decision and order of April 3, 1952].

Complaint

IN THE MATTER OF

CLINTON STUDIOS, 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 5871. Complaint, Apr. 11, 1951—Decision, Apr. 3, 1952

Where a corporation and its two officers, sole stockholders thereof, doing a substantial volume of business in the interstate sale and distribution of photographs; through sales agents who visited homes in cities, towns, and rural communities in various states to solicit orders—

- (a) Represented falsely to prospective purchasers that a local studio specializing in children's photographs was to be opened in the near future by said corporation, and that photographs of local children were desired for display purposes in the proposed studio;
- (b) Represented that refunds would be made if customers were dissatisfied with their purchases;

The facts being that while, in many instances, they sent dissatisfied purchasers a duplicate set of pictures, they did not make refunds in all instances when requested to do so; and

- (c) Falsely represented, in some instances, that customers would receive oil paintings of the children photographed;

With capacity and tendency to mislead and deceive members of the purchasing public into the erroneous belief that such representations were true and thereby cause them to purchase photographs:

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. Earl J. Kolb*, hearing examiner.

Mr. B. G. Wilson for the Commission.

Mr. Maurice Schapira, of Newark, N. J., for respondents.

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 Clinton Studios, Inc., a corporation, and Edward J. Davis and Ethel Davis, individually and as officers of said corporation, 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:

PARAGRAPH. 1. Respondent Clinton Studios, Inc., is a corporation organized and doing business under the laws of the State of New