

Order

48 F. T. C.

IN THE MATTER OF
ALEXANDER AUERBACH TRADING IN HIS OWN NAME
AND AS FRANK CORWIN, ETC.

MODIFIED CEASE AND DESIST ORDER

Docket 5025. Order—June 2, 1952

Order modifying prior order in the aforesaid matter, April 18, 1944, 38 F. T. C. 272 at 277, so as to require respondent, his agents, etc., in connection with the offer, etc., in commerce, of fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings or other wool waste which have been reclaimed and reworked, to cease and desist from making certain misrepresentations in connection with the use of the term "wool", "re-processed wool", and otherwise; and from misbranding "shoddy" or other wool products, in violation of the Federal Trade Commission and Wool Products Labeling Act, as in said order below set out.

Mr. R. P. Bellinger and *Mr. Randolph W. Branch* for the Commission.

Mr. Samuel Shapiro, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admitted all the material allegations of fact set forth in the complaint and 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 respondent has violated the provisions of the Federal Trade Commission Act, and the provisions of the Wool Products Labeling Act of 1939, on April 18, 1944, issued and subsequently served upon the respondent said findings as to the facts, conclusion and its order to cease and desist.

Thereafter, this matter came on for reconsideration by the Commission upon a motion by counsel for the Commission's Bureau of Anti-deceptive Practices to reopen this proceeding for the purpose of altering in certain respects the order to cease and desist herein, an affidavit as to certain facts alleged in said motion, a reply opposing said motion by counsel for respondent and an affidavit by respondent to the matters set out in said reply; and the Commission having reconsidered the matter and being of the opinion that the order to cease and desist should be so modified, and having granted said motion to reopen and alter the order to cease and desist:

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It is ordered, That the respondent, Alexander Auerbach, individually and trading in his own name or as Frank Corwin, Frank Corwin Company, David Demerer, or Hanover Wool Company, or trading under any other name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings or other wool waste which have been reclaimed and reworked, do forthwith cease and desist from:

(1) Using the term "wool" to designate, describe or otherwise refer to such reclaimed or reworked fibers unless such fibers are "wool," as the term is defined in the Wool Products Labeling Act of 1939.

(2) Using the term "reprocessed wool" to designate, describe or otherwise refer to such reclaimed and reworked fibers unless such fibers are "reprocessed wool," as the term is defined in the Wool Products Labeling Act of 1939.

Provided, however, That nothing herein contained shall be construed as in any way restricting, enlarging or altering the applicability of the provisions of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder to respondent or his products.

(3) Representing, directly or by implication, that fibrous stock composed in whole or in part of fibers reclaimed from woolen rags, clippings, or other wool waste which have been reclaimed and reworked, is or may be described or identified as "wool" under the provisions of the Wool Products Labeling Act of 1939, except to the extent which it contains constituent fibers of "wool" as defined in said Act, or is or may be described as "reprocessed wool" except to the extent which it contains constituent fibers of "wool" as "reprocessed wool" as defined therein.

(4) Misrepresenting or concealing, through the use of fictitious names or otherwise, the identity of respondent or his business.

It is further ordered, That the respondent, Alexander Auerbach, individually and trading in his own name and as Frank Corwin, Frank Corwin Company, Frank Cohen, David Demerer, and Hanover Wool Stock Company, or trading under any other name, and his 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 sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid Acts, do forthwith cease and desist from misbranding "shoddy" or other "wool products," as defined in and subject to the Wool Products

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Labeling Act of 1939, which 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, by failing to securely affix to or place on each of 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 non-fibrous loading, filling, or adulterating matter.

(c) The name of the manufacturer of such wool product, or the manufacturer's registered identification number and the name of a seller of such wool product, or the name of one or more persons introducing such wool product into commerce, or engaged in the sale, transportation, or distribution thereof in commerce, as "commerce" is defined in the Federal Trade Commission Act and 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 respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
BORK MANUFACTURING CO., INC. AND ALVIN BORKIN
MODIFIED CEASE AND DESIST ORDER

Docket 5525. Order—June 2, 1952

Order modifying, in accordance with the final decree entered on February 5, 1952, by the Court of Appeals for the Ninth Circuit in *Bork Manufacturing Co., Inc. et al. v. Federal Trade Commission*, cease and desist order of October 24, 1950, 47 F. T. C. 518 at 525 which required respondents to cease and desist from selling, etc., in commerce, punch boards, push cards, or other lottery devices "which are to be used or may be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme",—so as to delete therefrom the words "or may be used".

Before *Mr. W. W. Sheppard*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Maxwell Slote, of New York City, for respondents.

Battle, Fowler, Neaman, Stokes & Kheel and *Mr. Alvin Miller*, of New York City, also represented Alvin Bork.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondents' substituted answer (no brief having been filed by the respondents); and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having issued an order to cease and desist; and

Respondents Bork Manufacturing Co., Inc., a corporation, and Alvin Borkin, individually and as President of such corporation, having filed in the United States Court of Appeals for the Ninth Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, having fully considered the matter, and having, thereafter, on February 5, 1952, entered its final decree modifying and affirming and enforcing, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 5, 1952; and

Thereafter, the Commission having reconsidered the matter, and being of the opinion that its order should be modified so as to accord with the aforesaid opinion and final decree of the United States Court of Appeals for the Ninth Circuit:

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It is hereby ordered, That the respondents, Bork Manufacturing Co., Inc., a corporation, and Alvin Bork, individually and as President of such corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

Selling or distributing in commerce, as "commerce" is defined in the Federal Trade Commission Act, punchboards, push cards, or other lottery devices, which are to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That within the period of time allowed by the aforesaid final decree of the United States Court of Appeals for the Ninth Circuit, the respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
THE ELMO COMPANY, INC.

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

Docket 5959. Complaint, Feb. 28, 1952—Decision, June 10, 1952

Where a corporation engaged in the interstate sale and distribution to the public of a combination of drug preparations and a device referred to by it as "Home Treatment"; in advertisements in newspapers and periodicals and through circulars and other advertising media—

- (a) Represented that use of its said preparations and device in combination, as directed, would cure or constitute an effective treatment for deafness and impaired hearing, and particularly deafness and impaired hearing with ear and head noises due to catarrh, including dry catarrh;

The facts being that such treatment would have no beneficial effect upon deafness not caused by catarrh, and no such effect upon deafness or impaired hearing, together with head or ear noises caused by discharging catarrh, in excess of affording temporary relief; in case of dry catarrh the benefits were limited to softening of the dried exudates, which would have to be removed by other means for relief;

- (b) Falsely represented that its said method of treatment was based on the findings of accepted medical authorities specializing in the treatment of the eye, ear, nose and throat;
- (c) Represented falsely that catarrh is the most common cause of deafness;
- (d) Represented that said preparations and device might be used safely and without harm to the user; when in fact the directed procedure might cause infectious materials to be forced into the deeper structures of the ear, and might even result in injury to the ear drum;
- (e) Failed to reveal that the cotton on which its product was used should not be pushed into the ear so far that it would not be easily removed with the fingers, and that when infection was present, the cotton pushed deeply into the ear might result in injury, including the extension of infection into the deeper ear structures; and
- (f) Failed to reveal that use of aforesaid device might similarly result in extending infection into the deeper structures of the ear and in serious injury; and
- (g) Represented falsely in sales literature advertising a booklet or circular entitled "Diet—Foods and Vitamins", which it sold, "that Vitamin A in proper quantities helps materially to prevent colds";

With tendency and capacity to deceive a substantial portion of the purchasing public into the mistaken belief that said statements and advertisements were true and to induce it because of such belief to purchase said products:

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.