

Complaint

IN THE MATTER OF

JAMES BERMAN AND BENJAMIN KRANE DOING BUSINESS AS KRANE-BERMAN CLOTHING COMPANY

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 5955. Complaint, Feb. 13, 1952—Decision, June 21, 1952

Where two partners engaged in New York in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain wool products in that they were not stamped, tagged or labeled as required by said Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain men's trousers in that, labeled as 100% wool, they contained substantial quantities of other fibers; and
- (c) Misbranded certain other trousers in that, labeled 40% wool and 60% rayon, they contained substantially less wool and substantially more rayon than so represented:

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 constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. Carlo J. Aimone for the Commission.

Mr. Meyer Schwartz, of New York City, for James Berman.

Mr. Paul M. Klein, of New York City, for Benjamin Krane.

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 James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, hereinafter referred to as respondents, 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. The respondents, James Berman and Benjamin Krane, are partners doing business as Krane-Berman Clothing Com-

pany, at 141 Fifth Avenue, New York, New York, where their office and principal place of business is located and maintained.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were men's trousers labeled as 100% wool, when in truth and in fact the trousers were not 100% wool but contained substantial quantities of fibers other than wool. Other of respondents' trousers were labeled as 40% wool and 60% rayon, when in truth and in fact such trousers contained substantially less woollen fibers and substantially more rayon fibers than represented.

PAR. 5. The acts and practices of the 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 June 21, 1952, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, 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

February 13, 1952, issued and subsequently served its complaint in this proceeding upon the respondents, James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. After the service of said complaint upon said respondents, each of said respondents entered into a separate stipulation as to the facts whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respective respondents and counsel in support of the complaint may be taken as the facts in this proceeding, and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the hearing examiner may proceed upon said statement of facts to make his Initial Decision, stating his findings as to the facts, including inferences which he may draw from the said stipulations of facts, and his conclusion based thereon, and enter his order disposing of the proceeding as to each of said respondents, without the filing of proposed findings and conclusions or the presentation of oral argument. Each of said stipulations further provides that the Commission may, if the proceeding comes before it upon appeal from the Initial Decision of the hearing examiner or by review upon the Commission's own motion, set aside the stipulations and remand the case to the hearing examiner for further proceedings under the complaint. Thereafter, this proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and the aforesaid stipulations as to the facts, said stipulations having been approved and made part of the record by the hearing 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 respondents, James Berman and Benjamin Krane were, during the times herein mentioned, partners doing business as Krane-Berman Clothing Company, at 141 Fifth Avenue, New York, New York, where their office and principal place of business was located and maintained.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and

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offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of the said Act and the Rules and Regulations thereunder in that they were falsely and deceptively labeled with respect to the character and amount of the constituent fibers contained therein. Among the misbranded products aforementioned were men's trousers labeled as 100% wool, when in truth and in fact the trousers were not 100% wool but contained substantial quantities of fibers other than wool. Other of respondents' trousers were labeled as 40% wool and 60% rayon, when in truth and in fact such trousers contained substantially less woolen fibers and substantially more rayon fibers than represented.

CONCLUSION

The acts and practices of the respondents, as hereinabove found, 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.

ORDER

It is ordered, That the respondents, James Berman and Benjamin Krane, individually and as partners, doing business as Krane-Berman Clothing Company, or under any other name, names or designation, and said respondents' 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 men's trousers 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 products by:

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(1) Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers therein;

(2) Failing to securely affix to or place on each such product 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 per centum 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 per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total weight of such wool product of any non-fibrous 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, distribution or delivering for shipment thereof in commerce, as "commerce" is defined 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.

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 June 21, 1952].

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IN THE MATTER OF

PHILADELPHIA CHEWING GUM CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5970. Complaint, Mar. 18, 1952—Decision, June 23, 1952*

Where a corporation engaged in the interstate sale and distribution of assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public, and including a box containing 160 individually wrapped pieces for sale under a plan whereby the consumer purchaser who by chance secured the only piece wrapped with the letter "G" and was thereby enabled, through the inclusion thereof with the letters contained in other packages, to make up the words "bubble gum", became entitled to the "decorated sweat shirt" therein described—

Sold such assortments to wholesale dealers and jobbers, whose retail dealer purchasers exposed and sold them to the purchasing public in accordance with the aforesaid sales plan; and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product, contrary to an established policy of the United States Government;

With the result that many persons were attracted by the element of chance in said sales plans and were thereby induced to buy and sell its said gum:

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

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

Mr. J. W. Brookfield, Jr. 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 Philadelphia Chewing Gum Corporation, a corporation hereinafter referred to as respondent, has 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 the charges in that respect as follows:

PARAGRAPH 1. Respondent Philadelphia Chewing Gum Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania. Its office and principal place of business is located at Lawrence and Eagle Streets, Havertown, Pennsylvania. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of chewing gum,

including bubble gum, and has caused said products, when sold, to be transported from its place of business in Havertown, Pennsylvania, to purchasers thereof located in the various States of the United States other than Pennsylvania and in the District of Columbia. There is now, and has been for more than three years last past, a substantial course of trade in such chewing gum in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in Paragraph Two hereof, the respondent sells, and has sold to wholesale dealers and jobbers, assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public.

One of said assortments is composed of a box of 160 pieces of bubble gum of uniform size and shape. Said pieces of gum in said assortment are wrapped in individual wrappers and the outer wrapper is identical. Under the outer wrapper is an inner wrapper on which is printed one or more of the individual letters making up the words "bubble gum." The wrapper also bears the legend "Get this shirt with all the pictures on it. Save this wrapper. Collect all the letters and spell 'bubble gum.' Send wrappers to Philadelphia Chewing Gum Corporation, Havertown, Pennsylvania, for your decorated sweat shirt." Each assortment of gum contains numerous packages with the inner label carrying all of the letters to make up the words bubble gum except the letter "G." Only one of the wrappers in each box of 160 pieces of gum contains this letter. The printed letters on the inside of said wrappers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the particular wrapper removed.

When the consuming purchaser has procured wrappers bearing all the letters to spell out the words "bubble gum" he sends the wrappers to the respondent and is sent a sweat shirt.

The letters on each wrapper are effectively concealed until after the purchase has been made and the purchaser of a package of respondent's gum does not know what letter is on the wrapper, or if he has already purchased previous wrappers, he does not know whether the wrapper he will receive will bear the letter "G" until the purchase has been made and the letter on the wrapper disclosed. Respondent's merchandise is thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance and said assortments are used to promote the sale of its merchandise by lot or chance.

The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers and said retail

dealers expose said assortments for sale, and sell said chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth.

PAR. 3. The sale of said chewing gum to the purchasing public by the sales methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said methods or sales plans in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of chewing gum or other merchandise to the purchasing public in the manner above alleged involves a game of chance to procure one of the said sweat shirts at less than the normal retail price thereof and thereby attracts purchasers and consumers of respondent's chewing gum. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's chewing gum.

The use by respondent of a sales plan or method involving distribution of merchandise by means of chance, lottery or gift enterprise is contrary to the public interest and constitutes unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. The aforementioned acts, practices and methods of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair 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 June 23, 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, the Federal Trade Commission on March 18, 1952, issued and served

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its complaint in this proceeding upon the respondent, Philadelphia Chewing Gum Corporation, a corporation, charging it with the use of unfair acts and practices in commerce in violation of the provisions of said Act. On April 24, 1952, respondent filed its answer, in which it admitted all of the material allegations of facts set forth in said complaint, waived all intervening procedure and further hearing as to said facts, and consented that an order to cease and desist may issue in the form set forth in the "Notice" portion of the aforesaid complaint.

Thereafter, the proceeding regularly came on for final consideration by the above-named Hearing Examiner theretofore duly designated by the Commission upon said complaint and answer thereto, all intervening procedure having been waived and the right to submit Proposed Findings and Conclusions not having been reserved or requested; and 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, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Philadelphia Chewing Gum Corporation is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania. Its office and principal place of business is located at Lawrence and Eagle Streets, Havertown, Pennsylvania.

PAR. 2. Respondent is now, and for more than three years last past has been, engaged in the sale and distribution of chewing gum, including "bubble gum," and has caused said products, when sold, to be transported from its place of business in Havertown, Pennsylvania, to purchasers thereof located in the various States of the United States, other than the State of Pennsylvania, and in the District of Columbia. There is now, and has been a substantial course of trade in such chewing gum in commerce, as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent sells, and has sold, to wholesale dealers and jobbers, assortments of chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to members of the consuming public.

One of said assortments is composed of a box of 160 pieces of bubble gum of uniform size and shape. Said pieces of gum in said assortment are wrapped individually, all outer wrappers being identical. Under the outer wrapper is an inner wrapper on which is printed one or

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more of the individual letters making up the words "bubble gum." The wrapper also bears the legend "Get this shirt with all the pictures on it. Save this wrapper. Collect all the letters and spell 'bubble gum.' Send wrappers to Philadelphia Chewing Gum Corporation, Havertown, Pennsylvania, for your decorated sweat shirt." Each assortment of gum contains numerous packages with the inner label carrying all of the letters to make up the words "bubble gum" except the letter "G." Only one of the wrappers in each box of 160 pieces of gum contains this letter. The printed letters on the inside of said wrappers are effectively concealed from the purchasers and prospective purchasers until the selection has been made and the particular wrapper removed.

When the consuming purchaser has procured wrappers bearing all of the letters required to spell out the words "bubble gum" he sends such wrappers to the respondent and receives therefor a sweat shirt.

The letters on each wrapper are effectively concealed until after the purchase has been made, so that the purchaser of a package of respondent's gum does not know what letter is on the wrapper, or if he has already acquired previous wrappers, he does not know whether the wrapper he will receive will bear the letter "G" until the purchase has been made and the letter on the wrapper disclosed. Respondent's merchandise is thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance, and said assortments are used to promote the sale of its merchandise by lot or chance.

The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers and said retail dealers expose said assortments for sale, and sell said chewing gum to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of said chewing gum to the purchasing public by the sales methods above described involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said methods or sales plans in the sale of its merchandise and the sale of said merchandise by and through the use thereof, and by the aid of said sales plans or methods, is a practice which is contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of chewing gum or other merchandise to the purchasing public in the manner above found involves a game of chance to procure one of the said sweat shirts at less than the normal retail price thereof and thereby attracts purchasers and consumers of re-

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spondent's chewing gum. Many persons are attracted by said sales plans or methods used by respondent and the element of chance involved therein and thereby are induced to buy and sell respondent's chewing gum.

CONCLUSION

The aforesaid acts, practices and methods of respondent, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Philadelphia Chewing Gum Corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of chewing gum or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing, to jobbers and wholesale dealers or others, chewing gum or other merchandise so packed and assembled that the sales of such chewing gum or other merchandise to the general public are to be made, or are intended or designed to be made, by means of a lottery, gaming device or gift enterprise;
2. Packing or assembling in the same package or assortment of chewing gum, for sale to the public at retail, pieces of chewing gum contained within wrappers bearing various legends or letters, which wrappers, bearing particular legends or letters, when obtained in particular combinations, entitle the holder thereof to certain specified articles of merchandise as a prize;
3. Selling or distributing any assortments of chewing gum, or other merchandise, which are designed or intended to be used in the distribution of merchandise to members of the public by lottery or chance.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (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 June 23, 1952].

IN THE MATTER OF
HEALTH SPOT SHOE COMPANY 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 5842. Complaint, Jan. 25, 1951—Decision, June 24, 1952

Abnormalities of the feet often result from systemic causes requiring medical treatment, or from abnormalities in the lower extremities such as bow-legs, knock-knees, sway-back, and other conditions requiring surgery, and no two feet may have like abnormalities.

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of their "Health Spot Shoes," made in sizes for men, women and children, and sold by retail stores to all who desired them; through statements on labels and in advertisements in newspapers and periodicals of general circulation, and through folders, circulars, and radio continuities, directly and by implication—

- (a) Represented falsely that their shoes possessed features and characteristics which would prevent and correct all common foot ailments, and that use thereof would prevent weak feet, weak ankles, inrolling ankles, and weak and broken-down arches and faulty posture, and would correct such conditions where they existed;
- (b) Represented falsely that they would promote proper foot and postural development in children, provide natural support to the feet and arches, and needed support in cases of ankle pronation;
- (c) Represented falsely that they would insure comfort to the user and provide foot and body balance; and
- (d) Represented falsely that they possessed natural curved insoles which conformed accurately to the contour of the bottom of the foot, and that they would eliminate foot fatigue, keep the ankles straight and strong, hold the heel in normal position, prevent the development of abnormalities and deformities, and correct all disorders of the feet and keep them healthy;

The facts being that their said products were stock shoes, and while they contained certain features not found in some other stock shoes, their effect upon the feet, either in the prevention or correction of common foot ailments, was insignificant and in some cases harmful;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that such misrepresentations were true and thereby induce the purchase of substantial quantities of their 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.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. B. G. Wilson and *Mr. J. M. Doukas* for the Commission.

Graham & Spivey, of Danville, Ill., for respondents.