

Syllabus

IN THE MATTER OF
ALBERT H. FISHER ET AL. DOING BUSINESS AS FISHER
& DERITIS

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

Docket 5944. Complaint, Jan. 21, 1952—Decision, July 17, 1952

Sweaters made from wool have for many years held great public esteem and confidence because of their outstanding qualities and, in said connection, camels hair is generally recognized by the public as a type of wool and a highly desirable material for such products.

Sweaters made from rayon fabric so manufactured as to simulate wool in texture and appearance have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between the two types of garments, and some readily accept the rayon sweaters as the wool product.

There is no arbitrary standard of fabric characteristic that has been set up as a criterion to determine the degree of flammability of rayon or brushed rayon and the fact that a garment or fabric is made thereof and has a raised fibrous surface does not necessarily render it especially flammable, a test of each type of material being necessary before the degree of flammability can be definitely determined.

Where two partners engaged in the manufacture and interstate sale and distribution of sweaters of a brushed rayon fabric with a raised fiber surface which resembled wool in texture and appearance, and was invoiced by the manufacturer as being an "especially inflammable"; preceding their discontinuance of business and the taking of various steps to bring about the destruction of the garments involved—

- (a) Set forth, among other things, upon the labels attached to said sweaters and the containers thereof the depiction of a camel and the words "Camel Sportswear", notwithstanding the fact that said products were not made of wool; and
- (b) Without disclosing on the containers the "especially inflammable" character of the sweaters, sold approximately 100 dozen sets to some 70 to 80 "peddlers" located through the several states and in the District of Columbia, who resold them to the public with no such disclosure;

With tendency and capacity to mislead purchasers of said products into the false belief that they were made of camel's hair and were suitable and safe to be worn as wool sweaters ordinarily are, and with the result of placing in the hands of retail distributors of their said product the means correspondingly to mislead members of the consuming public in the aforesaid respects, and thereby into the purchase of 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.

Complaint

49 F. T. C.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Furia & DiCinto, of Philadelphia, Pa., for respondents.

COMPLAINT¹

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 Albert H. Fisher and Vincent DeRitis, individuals, trading and doing business as a partnership under the firm name of Fisher & DeRitis, 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. Respondents are individuals trading and doing business as a partnership under the firm name of Fisher & DeRitis with their office and principal place of business located at the southwest corner of 12th and Carpenter Streets in Philadelphia, Pennsylvania. The home address of respondent Albert H. Fisher is 1321 South 15th

¹ The complaint is published as amended by an order dated May 6, 1952, which, after placing the case on the Commission's own docket for review, amended the complaint, vacated and set aside the initial decision of the hearing examiner, and remanded the case, as follows:

Service of the initial decision of the hearing examiner in this proceeding having been completed on March 24, 1952, and the Commission having, on April 15, 1952, extended until further order of the Commission the date on which said initial decision would otherwise become the decision of the Commission; and

Counsel supporting the complaint having filed on March 25, 1952, a motion requesting that this proceeding be reopened for the taking of additional evidence, and the respondents having no objections to the granting of said motion; and

It appearing from said motion and the record herein that the complaint does not adequately allege the reason why the garments manufactured and sold by the respondents are highly inflammable and that, therefore, the evidence heretofore taken in the matter does not provide a sufficient basis for determining whether the initial decision of the hearing examiner constitutes an appropriate disposition of this proceeding; and

The Commission being of the opinion that, rather than reopen the proceeding for the taking of additional testimony as requested by counsel supporting the complaint, the complaint herein should be amended so as to adequately allege the reason or reasons why the said garments are highly inflammable, and that the case should be remanded to the hearing examiner for further proceedings upon the complaint, as amended:

It is therefore ordered, In conformity with the provisions of Rule XXII of the Commission's Rules of Practice, that this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the complaint herein be, and it hereby is, amended by striking the second sentence in the third subparagraph of Paragraph Five of said complaint and inserting in lieu thereof the following allegations: In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material and are dangerous and unsafe to be worn as an article of clothing.

It is further ordered, That the initial decision of the hearing examiner heretofore filed in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

77

Complaint

Street, Philadelphia, and the home address of respondent Vincent DeRitis is 1311 South 11th Street, Philadelphia.

PAR. 2. The respondents are now and for more than one year last past have been engaged in manufacturing articles of wearing apparel including sweaters which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Rayon is a chemically manufactured fiber which may be manufactured so as to simulate wool in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 4. In the course and conduct of their said business respondents sell and distribute sweaters in boxes labeled as follows:

Town and Country
Camel
(picture of a camel)
Camel Sportswear
Sportswear
Hand Tailored

Sewn in the sweaters so boxed is a cloth label containing the following:

(picture of a camel)
Camel
Sportswear
100% Pure
Spun Yarn

PAR. 5. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters. By the aforesaid labeling

of said sweaters respondents have represented that said sweaters are made of camel's hair. In truth and in fact, said sweaters are not made of camel's hair or of any other type of wool.

By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents do not inform the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as wool sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material and are dangerous and unsafe to be worn as an article of clothing. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 6. The practice of respondents as aforesaid of representing said sweaters as made of camel's hair, failing to reveal that said sweaters are made of rayon, and failing to reveal that said sweaters are made of a highly inflammable material unsafe to be worn as an article of clothing has had, and now has, the tendency and capacity to mislead and deceive the ultimate purchasers and prospective purchasers of said sweaters into the false and erroneous belief that said sweaters are made of camel's hair and are suitable and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof. Furthermore, respondents' said practices place in the hands of retailers of respondents' sweaters a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said sweaters are made of camel's hair and are fit and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon such erroneous belief.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public 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

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 July 17, 1952, the initial

decision in the instant matter of Hearing Examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 21, 1952, 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 said Act. After the issuance of said complaint and the filing of respondents' answer thereto, a hearing was held in Washington, D. C., at which testimony and other evidence in support of the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, the introduction of testimony and other evidence by the respondents being waived, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on March 6, 1952, the hearing examiner filed his initial decision which was duly served upon the parties. Thereafter, on March 25, 1952, counsel in support of the allegations of the complaint moved the Commission to order the proceeding reopened and remanded to the hearing examiner for the taking of additional evidence. Thereafter, the Commission, on May 6, 1952, entered its order placing the case on the Commission's own docket for review, amending the complaint, vacating and setting aside initial decision of hearing examiner and remanding the case to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

Thereafter, on May 23, 1952, counsel in support of the complaint entered into a stipulation as to the facts with counsel for respondents, subject to the approval of the hearing examiner, whereby it was agreed that the evidence taken under the complaint before amendment should be considered as evidence under the complaint as amended and that a statement of facts which was made a part thereof should be made a part of the record and be taken as facts in lieu of additional evidence in this proceeding; that the hearing examiner may proceed upon said statement of facts and the other evidence in the record to make his initial decision, stating his findings as to the facts and including inferences which he may draw from the said stipulation of facts and the other evidence and his conclusion based thereon and enter his order disposing of the proceeding without the filing of proposed findings and conclusions or the presentation of oral argument. It was fur-

Findings

49 F. T. C.

ther stipulated and agreed that the Federal Trade 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 stipulation and remand the case to the hearing examiner for further proceedings under the amended complaint.

Thereafter, the proceeding regularly came on for final consideration by the hearing examiner upon the amended complaint and the said stipulation, 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. Respondents are individuals trading and doing business as a partnership under the firm name of Fisher & DeRitis, with their office and principal place of business, during the years 1950 and 1951, located at the southwest corner of 12th and Carpenter Streets (1000 South 12th Street) in Philadelphia, Pennsylvania. The home address of respondent Albert H. Fisher is 1321 South 15th Street, Philadelphia, Pennsylvania, and the home address of respondent Vincent DeRitis is 1311 South 11th Street, Philadelphia, Pennsylvania.

PAR. 2. Said respondents for more than one year prior to January 1952, have been engaged in manufacturing and selling articles of wearing apparel including pullover and jacket sweaters which were composed of brushed rayon with a raised fiber surface, causing said products, when sold, to be transported from their place of business in the State of Pennsylvania to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Said respondents at all times herein mentioned have maintained a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business respondents sell and distribute sweaters in boxes labeled as follows:

Town and Country

Camel

(picture of an animal commonly known
as a camel)

Camel Sportwear

Sportswear

Hand Tailored

77

Findings

Sewn in the sweaters so boxed is a cloth label containing the following:

(picture of an animal commonly
known as a camel)

Camel

Sportswear
100% Pure
Spun Yarn

PAR. 4. Sweaters manufactured from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities. Camel's hair is generally recognized by the public as a type of wool and is a highly desirable material for sweaters. By the aforesaid labeling of said sweaters, respondents have represented that said sweaters are made from camel's hair. In truth and in fact said sweaters are not made from camel's hair or any other type of wool.

PAR. 5. Rayon is a chemically manufactured fiber from which a fabric may be manufactured so as to simulate wool in texture and appearance. Sweaters manufactured from such rayon fabric have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between sweaters manufactured from such fabric and sweaters manufactured from wool. Consequently, such rayon sweaters are readily accepted by some of the purchasing public as wool products.

PAR. 6. Respondents, prior to January 1952, in the course and conduct of their said business purchased from the manufacturers thereof a fabric made of brushed rayon with a raised fiber surface which resembled wool in texture and appearance and which they were informed by the manufacturer on the invoices was an "especially inflammable" material. Said respondents in their factory manufactured approximately 100 dozen sets of men's and women's sweaters daily during 1951 and sold the same to 70 to 80 "peddlers," located throughout the several States of the United States and in the District of Columbia, who resold the said sweaters to the public without disclosing that said sweaters were made of "especially inflammable" material.

PAR. 7. Flammability tests evaluating the flammability of the said sweaters by measurement of rate of burning when ignited were made by a chemist in the Fire Protection Section of the Building Technology Division of the United States Bureau of Standards of Washington, D. C. From the tests made it was found that the fabric tested came within the class of "Fabrics burning rapidly or intensely, and in

Findings

49 F. T. C.

which the base fabric is ignited or fused. The quick ignition and fast burning of the fabrics tested is due in part to the fact that all of the specimens had a raised fiber surface which allows the air to more nearly surround each individual strand of fiber." It was further found by this chemist that "material of ordinary wool such as is commonly used in pullover vests and jackets will not even ignite within the one second of time the apparatus used applies the ignition flame, but those fabrics burn with a surface flash only and the base fabric is not ignited or fused."

PAR. 8. Because a garment or a fabric is made of brushed rayon and has a raised fiber surface does not necessarily render it especially flammable. Some fabrics of brushed rayon may have such a short surface nap that they cannot be said to be especially flammable because of the raised fiber surface. The length of the fibers on the brushed up surface has a bearing on the degree of flammability of such material, but there are also other factors that would probably have a bearing. Among them are the fineness of the individual strands of fiber and the proximity of each individual strand to the other strands of fiber. There is no arbitrary standard of fiber characteristics that has been set up as a criterion to determine the degree of inflammability of rayon or brushed rayon. By long practice an expert, by looking at and examining a piece of rayon fabric, can have a pretty good idea of its degree of flammability, but a test of each type of material is necessary before the degree of flammability can be definitely determined.

PAR. 9. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are made of wool and are suitable and are safe to be worn as wool sweaters are ordinarily worn. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed to the public that said sweaters were "especially inflammable."

PAR. 10. Respondents in January 1952 ceased manufacturing said sweaters and immediately notified all distributors to return unsold sweaters to respondents, and notified all railroads, express companies, airlines and trucking companies either to return all sweaters in transit to the respondents at the expense of the respondents, or to destroy same at the expense of the respondents. Furthermore, respondents, prior to the filing of the complaint herein, on their own volition requested the aid of the Fire Marshall and with his assistance burned all finished sweaters, cut and unsewed sweaters, and approximately 50 bolts of sixty inch wide material, (about 20 truck loads) valued at \$40,000.00, on one of the city dumps of Philadelphia. Respondents

77

Order

have sold all their machines and equipment and gave up their lease and are now out of business.

PAR. 11. The practice of respondents as aforesaid of representing said sweaters as made of camel's hair; failing to reveal that said sweaters are made of an especially inflammable material; has had the tendency and capacity to mislead and deceive the ultimate purchasers and prospective purchasers of said sweaters into the false and erroneous belief that said sweaters were made of camel's hair and were suitable and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon such false and erroneous belief. Furthermore, respondents' said practices placed in the hands of retail distributors of respondents' sweaters a means and instrumentality to mislead and deceive members of the buying and consuming public into the false and erroneous belief that said sweaters were made of camel's hair and were fit and safe to be worn as wool sweaters are ordinarily worn, and into the purchase thereof in reliance upon such false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public 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 respondents, Albert H. Fisher and Vincent DeRitis, individually and trading and doing business under the firm name of Fisher & DeRitis, or under any other name or names, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sweaters or of any other garments made of the material known as brushed rayon with a raised fiber surface or of any similar material, do forthwith cease and desist from:

- (1) Representing directly or by implication that said garments are made of camel's hair or any other type of wool;
- (2) Offering for sale or selling any garments composed in whole or in part of rayon without affirmatively and clearly disclosing thereon such rayon content;
- (3) Offering for sale or selling garments made of a highly inflammable material without affirmatively and clearly disclosing thereon

Order

49 F. T. C.

that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

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 July 17, 1952].

Complaint

IN THE MATTER OF
KENTUCKY CHEMICAL INDUSTRIES, INC.

COMPLAINT, SETTLEMENT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5971. Complaint, Mar. 24, 1952—Decision, Aug. 6, 1952

Where a corporation which was engaged in the manufacture and competitive interstate sale and distribution, primarily to retail feed dealers in the eastern and southeastern United States, of animal proteins known as "K-C Brand" meat and bone scraps and digester tankage, and of its "Proviso" brand complete feeds and concentrates;

In selling its said feed products through two so-called volume rebate plans known as "Dealer Patronage Dividend Contracts", pursuant to which it paid patronage dividends, discounts, rebates or refunds, to the less than 50% of its dealers who qualified—

- (a) Discriminated in price between different purchasers in the "Delmarva" peninsula principally, through the use of a sliding scale, under which discounts ranged from 50¢ per ton for monthly purchases of from 60 to 120 tons, to \$1.50 per ton for 480 tons or over; and
- (b) Similarly discriminated in price between different purchasers in other areas through the use of a plan pursuant to which the dealer received points on all of its feed purchases during a twelve-month period, with higher point values for the more expensive purchases, and under which the dealer received discounts of from 5¢ to 20¢ per point, depending upon the points accumulated, ranging from a minimum of 300 to 10,000 and over;

Effect of which discriminations in price might be substantially to lessen competition or tend to create a monopoly in respondent in the line of commerce in which it was engaged, and to injure, destroy and prevent competition between it and other manufacturers and sellers of animal feed products; and to injure, destroy and prevent competition between customers who received the benefits of such discriminations which it granted, and competing dealer purchasers who did not:

Held, That such plans, acts and practices were in violation of the provisions of Sec. 2 (a) of the Clayton Act as amended, by the Robinson-Patman Act.

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

Mr. Fletcher G. Cohn and *Mr. Robert F. Quinn* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Antitrust Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, having