

Syllabus

IN THE MATTER OF

LOUIS RAFANELO TRADING AND DOING BUSINESS AS
BRADFORD SPORTSWEAR COMPANY

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

Docket 5948. Complaint, Jan. 24, 1952—Decision, Aug. 19, 1952

Products made from wool, a highly desirable material for sweaters, have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities.

Articles of wearing apparel made from rayon fibers so manufactured as to simulate wool in texture and appearance, have the appearance and feel of wool and cannot be distinguished by many members of the purchasing public, so that rayon articles of wearing apparel are readily accepted by some as wool.

Where an individual engaged in the manufacture and interstate sale and distribution of sweaters which, composed of brushed rayon, simulated wool in texture and appearance—

- (a) Falsely represented through the labeling on the boxes containing his sweaters that they were hand-tailored; when in fact they were machine-made;
- (b) Sold and distributed said sweaters without informing the purchasing public of the fact that they were made of rayon and not wool; and,
- (c) Sold and distributed said sweaters which he thus represented and impliedly warranted as suitable and safe for wearing, without revealing on the garments or otherwise that they were highly inflammable by reason of the length of the fibers on the brushed-up surface of the fabric, and were unsafe to wear;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public in the aforesaid respects and thereby into the purchase of substantial quantities of said sweaters; and with result of placing in the hands of retailers a means whereby members of the purchasing public might be misled and deceived as above set forth:

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. Abner E. Lipscomb*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Benedetto A. Cerilli, of Providence, R. I., for respondent.

Complaint

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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 Louis Rafaneli, an individual trading and doing business as Bradford Sportswear Company, 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 its charges in that respect as follows:

PARAGRAPH 1. The respondent Louis Rafaneli is an individual trading and doing business as Bradford Sportswear Company with his office and principal place of business located at 1100 Westminster Street, Providence, Rhode Island.

PAR. 2. The respondent is now, and for more than two years last past has been, engaged in the manufacture, sale and distribution of articles of wearing apparel including sweaters which are composed of rayon. Respondent causes his products when sold to be transported

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 February 25, 1952, and the Commission having, on March 25, 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 12, 1952, a motion requesting that the Commission place this case on its own docket for review and thereafter amend the complaint and the initial decision of the hearing examiner in the respects set forth in said motion, and counsel for the respondent having interposed no objections to the granting of said motion and having agreed that the answer to the complaint, heretofore filed, shall be considered as respondent's answer to the complaint as amended, if said motion is granted; and

It appearing that the complaint herein does not adequately allege the reason or reasons why the garments manufactured and sold by the respondent are highly inflammable, and that, therefore, the initial decision of the hearing examiner, which is based upon said complaint and answer of the respondent admitting all of the material allegations of fact, does not constitute an appropriate disposition of this proceeding; and

The Commission being of the opinion that the complaint herein should be amended and that the initial decision of the hearing examiner should be vacated and set aside, rather than amended as requested by counsel supporting the complaint, and that the case should be remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice:

It is 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 of Paragraph Seven 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.

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.

from his place of business in the State of Rhode Island to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has 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 chemical fiber which may be manufactured so as to simulate wool and other natural fibers 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. The sweaters so manufactured are sold and distributed by respondent under the brand name "Embassy" and simulate wool in texture and appearance. In the course and conduct of his said business respondent sells and distributes the sweaters in boxes labeled as follows:

Standard of Excellence

(picture of the face of a puma)

Embassy Sportswear

For Town and Country—Hand Tailored

PAR. 5. By the aforesaid labeling, respondent has represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 6. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Wool is a highly desirable material for sweaters.

Respondent sells and distributes said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

PAR. 7. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondent has represented and impliedly warranted that they are suitable and safe to be worn as 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. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. 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. 8. The practice of respondent, as aforesaid, of representing that said sweaters are hand tailored, failing to reveal that said sweaters are made of rayon and failing to reveal that they 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 a substantial portion of the purchasing public into the erroneous and mistaken belief that said sweaters are made by tailors by hand, are made of wool and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Furthermore, respondent's said practices place in the hands of retailers of respondents's sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 9. The aforesaid acts and practices of respondent, 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 August 19, 1952, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Louis Rafanelo, incorrectly spelled in the complaint as Louis Rafan-eli, an individual trading and doing business as Bradford Sportswear Company, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said Act. On February 6, 1952, respondent filed his answer, in which he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on for final

Findings

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 said hearing examiner, on February 11, 1952, issued his initial decision therein. Thereafter, upon motion of counsel supporting the complaint, the Commission placed this proceeding on its docket for review, amended the complaint, vacated and set aside the initial decision of the hearing examiner theretofore issued, and remanded the case to the hearing examiner for further proceedings upon the amended complaint.

Thereafter, on June 13, 1952, respondent filed his answer to the amended complaint, in which he admitted all the material allegations of fact set forth therein and waived all intervening procedure and further hearing as to said facts. Thereupon the hearing examiner, having duly considered the amended complaint and respondent's answer thereto, as well as the complete 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. The respondent Louis Rafenelo is an individual trading and doing business as Bradford Sportswear Company, with his office and principal place of business located at 1100 Westminster Street, Providence, Rhode Island.

PAR. 2. The respondent is now, and for more than two years last past has been engaged in the manufacture, sale and distribution of articles of wearing apparel, including sweaters which are composed of rayon. Respondent causes his products, when sold, to be transported from his place of business in the State of Rhode Island to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has 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 chemical fiber which may be manufactured so as to simulate wool and other natural fibers 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.

Findings

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PAR. 4. The sweaters so manufactured are sold and distributed by respondent under the brand name "Embassy" and simulate wool in texture and appearance. In the course and conduct of his said business respondent sells and distributes the sweaters in boxes labeled as follows:

Standard of Excellence
(picture of the face of a puma)
Embassy Sportswear
For Town and Country—Hand Tailored.

PAR. 5. By the aforesaid labeling, respondent has represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 6. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Wool is a highly desirable material for sweaters.

Respondent sells and distributes said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters which resemble wool in texture and appearance are made of rayon and not of wool.

PAR. 7. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondent has represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact said sweaters are made of a material known as brushed rayon, which, because of the length of the fibers on the brushedup surface, thereof, is highly inflammable. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. 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. 8. The practices of respondent, as hereinbefore found, of representing that said sweaters are hand tailored; of failing to reveal that said sweaters are made of rayon; and of failing to reveal that, because of the length of the fibers on the brushed-up surface of the fabric of which said sweaters are made, such garments are highly inflammable and are unsafe to be worn as an article of clothing, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said sweaters are made by tailors by hand, are made of wool, and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Fur-

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Order

thermore, respondent's said practices place in the hands of retailers of respondent's sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

CONCLUSION

The aforesaid acts and practices of respondent, 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 respondent Louis Rafanelo, an individual trading and doing business as Bradford Sportswear Company, or under any other name or names, and his 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 or of any similar material, do forthwith cease and desist from:

1. Representing, directly or by implication, that said garments are hand tailored;
2. Offering for sale or selling any garments, composed in whole or in part of rayon, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, such rayon content;
3. Offering for sale or selling garments made of highly inflammable material without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, 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 respondent herein 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 the order to cease and desist [as required by said declaratory decision and order of August 19, 1952].

IN THE MATTER OF
INTERNATIONAL SALT COMPANY AND EASTERN SALT
COMPANY

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

Docket 4307. Complaint, June 5, 1943¹—Decision, Aug. 22, 1952

Any appreciable difference in the wholesale or the retail price of table salt of the same brand, grade and quality has a tendency to divert sales.

Where one of the largest salt producers in the United States and its wholly owned subsidiary, engaged in the competitive interstate sale and distribution of their evaporated salt under various trade names including "Sterling", "Columbia", and "Purity", to purchasers competitively engaged with one another in the resale thereof at wholesale, at retail, and at wholesale to retailers competing with certain of said purchasers—

- (a) Discriminated in price by selling their table salt at lower net prices to purchasers classified as having purchased \$50,000 worth in a twelve consecutive month period, irrespective of the source thereof, through the practice of granting such favored purchasers a "unit discount" equal to about 4 to 5 per cent of the published price on each item; and
- (b) Discriminated in price in their northern sales territory, prior to January 15, 1940, through granting to purchasers who bought in single order quantities of 100 cases or more a unit discount of the same value as that above described, and thereafter through establishing higher posted prices for quantities of less than 100 cases, which made up the amount of the unit discount previously granted on 100 case purchases;

With the result that each of their customers who did not receive the advantage of buying at their lowest prices through the application of their 5 cent per case unit discount, and who were in competition with the customers who received such discriminations, necessarily either resold the salt at a higher price than that of said favored competitors or received a lower gross margin on their sales; and with tendency to cause purchasers who did not receive respondents' lowest net price to resell their salt at higher prices than did purchasers who received respondents' lowest prices;

Effect of which discriminations in price, neither shown as made in good faith to meet an equally low price of a competitor, nor justified by due allowance for differences in cost, etc., under the statute, might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition between purchasers who received the benefit of said discriminatory prices and discounts and those to whom they were denied:

Held, That such acts and practices of respondents in selling their table salt to certain purchasers at lower net prices than to others who competed in its resale, as above set forth, constituted violations of Subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act; and—

¹ Second amended.