

Complaint

49 F. T. C.

IN THE MATTER OF

NYE N. SUSSMAN D. B. A. UTILITY BLANKET COMPANY
AND NYE MERCANTILE COMPANY

COMPLAINT, DECISION, 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 6062. Complaint, Nov. 21, 1952—Decision, Feb. 24, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain blankets in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder; and
- (b) Misbranded blankets in that, labeled as "100% reprocessed wool", they in fact contained substantial quantities of fibers other than wool:

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. George E. Steinmetz 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 acts, the Federal Trade Commission, having reason to believe that Nye N. Sussman, trading and doing business under the name of Utility Blanket Company as well as under the name of Nye Mercantile Company has 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. Respondent Nye N. Sussman is an individual trading and doing business as Utility Blanket Company and as Nye Mercantile Company, with his principal place of business in both instances at 136 Greene Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act and more especially since 1950, respondent has manu-

factured 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, to-wit; blankets, 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 meaning and intent 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 wool products aforementioned were blankets labeled by the respondent as "100 percent reprocessed wool" when in truth and in fact such blankets were not 100 percent reprocessed wool but contained substantial quantities of fibers other than wool.

PAR. 5. The acts and practices of the respondent as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts 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 February 24, 1953, 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 November 21, 1952, issued and subsequently served its complaint in this proceeding upon the respondent Nye N. Sussman, trading and doing business as Utility Blanket Company and as Nye Merchantile Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Acts. On December 18, 1952, respondent filed his answer, in which answer

Conclusion

49 F. T. C.

he admitted all of the material allegations of fact set forth in said complaint and waived any hearing as to the facts and all intervening procedure, except the right to submit proposed findings and conclusions and the right to appeal from the initial decision. Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer thereto, no proposed findings and conclusions having been submitted by counsel, and all other intervening procedure having been waived, 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 Nye N. Sussman is an individual trading and doing business as Utility Blanket Company and as Nye Mercantile Company, with his principal place of business in both instances at 136 Greene Street, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1950, respondent has 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 said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products, to-wit; blankets, were misbranded in that they were not stamped, tagged or labeled as required under the provisions of section 4 (a) (2) of the said Wool Products Labeling Act, 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 meaning and intent 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 wool products aforementioned were blankets labeled by the respondent as "100% reprocessed wool" when in truth and in fact such blankets were not 100% reprocessed wool but contained substantial quantities of fibers other than wool.

CONCLUSION

The acts and practices of the respondent, as hereinabove found, were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constitute un-

1118

Order

fair 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 Nye N. Sussman, individually and trading under the names of Utility Blanket Company and Nye Mercantile Company or trading under any other name, and said respondent's 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 Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of blankets 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:

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 clear and conspicuous manner:

(a) The percentage of the total fiber weight of such 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 percentage of the total weight of such wool product of any nonfibrous 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 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

Order

49 F. T. C.

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 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 February 24, 1953].

Syllabus

IN THE MATTER OF
UNDERWOOD CORPORATION

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5797. Complaint, July 12, 1950—Decision, Mar. 2, 1953

Where a corporation, long engaged in the manufacture and interstate sale of fanfold billing machines and carbon rolls, which, in the five years ending in 1950, sold its said machines to the amount of about \$1,000,000, sold carbon rolls for its machines to about \$711,000, and sold carbon rolls for other machines to about \$1,290,000; which had long been engaged in active and substantial competition with others similarly engaged, including those who made, sold, and distributed carbon rolls suitable for use in its own said machines; and which, as thus engaged, had long supplied to numerous purchasers and users of its said machines devices—known as “carbon roll bracket plates”, which were of value in the operation of its said machines—of which it was the sole manufacturer—

- (a) Entered into “loan agreements” with thousands of customers over a period of years, the earlier of which set forth that the equipment loaned, consisting of the aforesaid carbon roll bracket plates for which no rental was charged, was loaned for use exclusively on machines made or marketed by it (or its predecessor), and exclusively with its carbon rolls; and supplemented—at least on occasion—a later form of agreement, in which no mention was made of such condition, by representations of its salesmen, dealers, or agents, that users of the devices were obligated to buy carbon rolls exclusively from it;

Whereby a significant and substantial volume of business was affected, and competitors were foreclosed from a substantial market for carbon rolls suitable for use in its fanfold billing machines;

Tendency and capacity of which leases without rental may have been to substantially lessen competition in the sale of carbon rolls of the type suitable for use in its said machines, in commerce; and

- (b) Represented, during the period involved, through some of its salesmen, dealers, or agents, to users of the devices, that they were obligated to buy carbon rolls exclusively from it;

With tendency and capacity to compel such users to purchase carbon rolls exclusively from it, to the exclusion of purchases from its competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce; and that said corporation, through use of the acts and practices above set forth, violated Sec. 3 of the Clayton Act.