

Syllabus

IN THE MATTER OF

BROWNER & LEFKOWITZ, INCORPORATED ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDER 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 6054. Complaint, Oct. 17, 1952—Decision, Mar. 5, 1953

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' coats in that they were not stamped, tagged or labeled as required by said Act and the Rules and Regulations promulgated thereunder;
- (b) Misbranded certain of said coats in that they were labeled or tagged as containing "Wool Interlining", notwithstanding the fact that said interlinings were not wool as defined by said Act but were composed of reused wool together with substantial quantities of miscellaneous fibers; and
- (c) Further misbranded such coats in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tags, and labels as required by the said Act and Rule 24 of said Rules and Regulations:

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. Everett F. Haycraft*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Mr. Bernard L. Baskin, of New York City, for respondents.

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 Browner & Lefkowitz, Incorporated, a corporation, and Benjamin Browner and Herman Lefkowitz, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, 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 Browner & Lefkowitz, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Benjamin Browner and Herman Lefkowitz are the president and the secretary-treasurer, respectively, of the said respondent corporation. Respondents Benjamin Browner and Herman Lefkowitz direct and control the policies, acts and practices of the corporate respondent, and the offices and principal place of business of all respondents are located at 252 West 37th Street, New York, New York.

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act 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 said Wool Products Labeling Act and the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products aforementioned were ladies' coats labeled or tagged by the respondent corporation as containing "Wool Interlining," when in truth and in fact the said interlinings were not wool as defined by the Wool Products Labeling Act of 1939, but contained reused wool together with substantial quantities of miscellaneous fibers other than wool.

Other wool products of the respondent corporation, namely, ladies' coats, were misbranded in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tag or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 5. The acts and practices of the respondents as herein alleged constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and all of the aforesaid acts and practices as herein alleged are 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 March 5, 1953, 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 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 October 17, 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 Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, in connection with the sale of women's wearing apparel. After the filing of respondents' answer in this proceeding a hearing was held on December 17, 1952, before the above-named hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Bernard L. Baskin, attorney for respondents, and George E. Steinmetz, attorney in support of the complaint, subject to the approval of the hearing examiner, whereby it was stipulated and agreed that a statement of facts agreed to on the record may be made a part of the record herein and 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; that the said 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 stipulation of facts and his conclusion based thereon and enter his order disposing of the proceeding as to said respondents without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation as to the facts expressly provides that upon appeal to or review by the Commission, said stipulation may be set aside by the Commission and this matter remanded for further proceedings under the complaint.

Thereafter, this proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer, and stipulation, said stipulation having been approved 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. Respondent Browner & Lefkowitz, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Benjamin Browner and Herman Lefkowitz are the president and the secretary-treasurer, respectively, of the said respondent corporation. Respondents Benjamin Browner and Herman Lefkowitz direct and control the policies, acts and practices of the corporate respondents, and the offices and principal place of business of all respondents are located at 252 West 37th Street, New York, New York,

PAR. 2. Subsequent to the effective date of the said Wool Products Labeling Act 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 said Wool Products Labeling Act and the Rules and Regulations made thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among the misbranded wool products aforementioned were ladies' coats labeled or tagged by the respondent corporation as containing "Wool Interlining," when in truth and in fact the said interlinings were not wool as defined by the Wool Products Labeling Act of 1939, but contained reused wool together with substantial quantities of miscellaneous fibers other than wool.

Other wool products of the respondent corporation, namely, ladies' coats, were misbranded in that the character and amount of the constituent fibers contained in the interlinings thereof were not separately set forth on the stamps, tag or label as required by the said Act and Rule 24 of the Rules and Regulations promulgated under said Act.

CONCLUSION

The acts and practices of respondents as found in Paragraphs Three and Four hereof are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and are to the prejudice and injury of the public and constitute unfair and

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deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Browner & Lefkowitz, Incorporated, a corporation, and its officers, and respondents, Benjamin Browner and Herman Lefkowitz, individually and as officers of said corporation, and 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 Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of ladies' coats 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 included 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 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 delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to separately set forth on the required stamp, tag, label or other means of identification the character and amount of the constituent fibers appearing in the interlinings of such wool products,

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as provided in Rule 24 of the Rules and Regulations promulgated under the said Act.

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 of 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 March 5, 1953].

IN THE MATTER OF
FEDERAL COACHING INSTITUTE, INC. ET AL.

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

Docket 6056. Complaint, Nov. 3, 1952—Decision, Mar. 5, 1953

The term "registrar" implies the functions ordinarily incumbent upon officers of educational institutions employed and designated as "registrars."

Where a corporation and its president and general manager, engaged in the interstate sale and distribution of a correspondence course to prepare students for examinations for United States Civil Service positions; in advertising their said course through printed matter, including postal cards, distributed to prospective students—

- (a) Falsely represented and implied through the use of their corporate name, Federal Coaching Institute, Inc., that their business was a branch of or connected with the United States Government or the United States Civil Service Commission; and
- (b) Represented falsely that many positions in the United States Civil Service, including those specifically listed in their "Partial List of Civil Service Positions", were vacant, and were available to all applicants: that many thousands of permanent appointments were being made monthly; and that men and women were needed to fill said vacancies and were wanted by the U. S. Government to prepare for Civil Service positions, which might be obtained through it;
- (c) Represented that examinations would be held for the various aforesaid positions in the vicinity of the residence of the applicant; that instructions were being given for preparatory training for civil service if the applicant could qualify; that starting salaries were as high as \$4479 a year and that experience was usually unnecessary; and that the specifications as to age, education, and starting salaries set forth in said "Partial List" were in accordance with the requirements of the Civil Service Commission;

The facts being that starting salaries were, in many instances, substantially less than stated; there were, among positions listed, a substantial number that do require experience; their information with respect to requirements, starting salaries, etc., was inaccurate and misleading in that many positions were restricted to veterans or required special qualifications or experience; and in the case of a number of the listed positions, no examination had been announced for many years;

- (d) Represented as aforesaid that checking their said list would enable prospective students to determine for what positions they were qualified, and that their "field registrars" were qualified and competent to advise prospects as to their qualifications for positions in the Civil Service;

The facts being that their salesmen or so-called "registrars" did not exercise the functions implied by the term, were employed on a commission basis to sell their courses, and were not qualified to so advise prospective students;