

Complaint

49 F. T. C.

IN THE MATTER OF

MILLER & LIBOW, 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, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 6057. Complaint, Nov. 3, 1952—Decision, Mar. 12, 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; and
- (b) Misbranded certain of said coats in that they were labeled or tagged as containing "100 percent Wool" zip-in or removable linings, notwithstanding the fact that said interlinings were not wool as defined by said Act but were composed of reclaimed and reprocessed wool fibers, together with substantial quantities of miscellaneous 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. Everett F. Haycraft*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Mr. Milton J. Levy, 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 Miller & Libow, Incorporated, a corporation, and Robert Libow and M. L. Miller, 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 Miller & Libow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Robert Libow and M. L. Miller are the president and the secretary treasurer, respectively, of the said respondent corporation. Respondents Robert Libow and M. L. Miller direct

and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 241 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 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 of Rule 24 of 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 as aforementioned were ladies' coats, labeled or tagged by respondent corporation as containing "100 percent Wool" zip-in or removable linings; whereas, in truth and in fact, said linings were not Wool as defined by the Wool Products Labeling Act of 1939, but were composed of reclaimed and reprocessed wool fibers, together with certain quantities of miscellaneous fibers other than wool.

PAR. 5. The acts and practices of the respondents, as herein alleged, constitute misbranding of wool products and as such are in violation of the Wool Products Labeling Act of 1939, and of the said 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 AND ORDER TO FILE REPORT OF COMPLIANCE

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 3, 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.

Findings

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After the filing of respondents' answer in this proceeding a hearing was held on December 18, 1952, before a hearing examiner of the Commission, theretofore duly designated by it, at which a stipulation was entered into by and between Milton J. Levy, 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 conclusions 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. Thereafter on January 23, 1953, said hearing examiner filed his initial decision.

Within the time permitted by the Commission's Rules of Practice, counsel for respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon the record herein, including said appeal and answer of counsel supporting the complaint not opposing said appeal; and the Commission, having issued its order granting said appeal and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Miller & Libow, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondents Robert Libow and M. L. Miller are the president and the secretary treasurer, respectively, of the said respondent corporation. Respondents Robert Libow and M. L. Miller direct and control the policies, acts and practices of the corporate respondent. The offices and principal place of business of all respondents are located at 241 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.

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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 said Wool Products Labeling Act and of Rule 24 of 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. The misbranded wool products as aforementioned were ladies' coats, labeled or tagged by respondent corporation as containing "100 percent Wool" zip-in or removable linings; whereas, in truth and in fact, said linings were not Wool as defined by the Wool Products Labeling Act of 1939, but were composed of reclaimed and reprocessed wool fibers, together with certain quantities of miscellaneous fibers other than wool.

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

ORDER

It is ordered, That the respondents, Miller and Libow, Inc., a corporation, and its officers, Robert Libow and M. L. Miller, individually and as officers of said corporation, and respondents' 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 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 said 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 percentum 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 percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage 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 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, 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 or Rules and Regulations promulgated thereunder.

It is further 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 this order.

Syllabus

IN THE MATTER OF

NAMSCO, INC. (FORMERLY NATIONAL WHEELS AND
PARTS MANUFACTURING CO., INC.)

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

Docket 5771. Complaint, May 1, 1950—Decision, Mar. 17, 1953

Automotive parts jobbers operate on a very small profit margin, and such a jobber's profit is made up of an accumulation of small margins of profit on many items, and where particular products, though slow moving, are essential items in every jobber's stock, the profit thereon contributes to the aggregate which determines whether a jobber grows, remains the same size, goes backward, or fails.

Price competition is but one form of competition, and additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, and proximity to customers all aid such jobbers to stay in business and to prosper; and the institution or expansion of such competitive aids depends directly on operating profit margin, a major factor in which is cost of merchandise purchased.

To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary that a distributor must testify he attempted to sell the product of one of the sellers to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

A contention that since certain products are slow in turnover and constitute but a small part of the invested capital of distributor buyers, small differences in the cost of acquisition do not affect competition, is not valid, since, like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profits, but necessary to stock; and it was the intention of Congress to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

A further contention that, in a price discrimination proceeding in which the alleged discriminating seller suggested certain resale prices for his distributor customers, no injury to competition or substantial lessening thereof was shown where the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is likewise not valid, since, where purchasers who buy and compete in the resale of the same merchandise are charged different prices therefor, the conclusion is inescapable that injury