

IN THE MATTER OF
ASHEVILLE FABRICS, 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 6002. Complaint, June 17, 1952—Decisions, Mar. 24, 1953

Rayon and acetate are chemically manufactured fibers, and fabrics manufactured therefrom are capable of being finished so as to simulate wool and other natural fibers in texture and appearance, and garments manufactured from fabrics composed of rayon and acetate are likewise capable of having the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such garments and those made from wool.

The term "worsted" means primarily and popularly a yarn or fabric made wholly of wool, the product of the fleece of the lamb or sheep, and there is a preference on the part of a substantial portion of the purchasing public for wearing apparel made from fabrics composed of wool or worsted, over wearing apparel made from other and non-wool fabrics, particularly those made to simulate wool or worsted.

Where a corporation engaged in converting, selling and distributing rayon and acetate fabrics simulating wool fabrics in appearance, which it sold principally to manufacturers of women's apparel, such as suits and skirts—

- (a) Distributed among prospective purchasers sample swatches of the fabrics to which were attached cards bearing the legend "Crush Resistant Suitings With That Worsted Texture";
- (b) Supplied its customers with tags reading in part "An Asheville Fabric with that Worsted Texture", which could be, and were, attached to finished garments manufactured by such customers and sold to retail stores; and
- (c) Failed to reveal on said cards or tags that the fabrics were made of rayon or acetate and contained no wool whatsoever, notwithstanding use of the term "worsted";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the composition of said fabrics, and thereby into the purchase of substantial quantities of such garments; and with effect of placing in the hands of manufacturers and retailers a means to mislead and deceive said public:

Held, That such acts and practices, under the circumstances set forth, constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William L. Pack*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Conrad & Smith, of New York City, for respondents.

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Complaint

COMPLAINT

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 Asheville Fabrics, Inc., a corporation, and Lawrence Herman, individually and as an officer of said corporation, 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. Respondent, Asheville Fabrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Lawrence Herman is president of said Asheville Fabrics, Inc., and formulates, controls and directs the policies and practices of said corporate respondent. All of said respondents maintain their offices and principal place of business at 1407 Broadway in the City of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been engaged in the business known as converting and distributing rayon and acetate fabrics, which fabrics, when sold, are by said respondents shipped and transported from their place of business in the City of New York, New York, to purchasers thereof located in various other States of the United States. Said respondents also cause such fabrics to be transported from various mills manufacturing the same to the several places of business of their dyers and finishers located in the States of New York and New Jersey and thence to the respondent's place of business in the State of New York and also to customers located in various States of the United States other than the States of New York and New Jersey. There is now and has been, during all of the times mentioned herein, a course of trade in commerce by said respondents in said fabrics between and among the various States of the United States. The volume of such trade has been and is now substantial.

PAR. 3. Respondents, under the name of Asheville Fabrics, Inc., are now, and during all of the times mentioned herein have been, in substantial competition with other firms, persons, corporations and co-partnerships engaged in converting and offering for sale and selling and distributing rayon and acetate and all rayon fabrics to manufacturers of garments and wearing apparel and others engaged in commerce between and among the various States of the United States.

PAR. 4. Rayon and acetate are each a chemically manufactured fiber, and fabrics manufactured therefrom are capable of being finished as

to simulate wool and worsted and other natural fibers in texture and appearance. Garments manufactured from such fabrics composed of rayon and acetate are capable of having the appearance and feel of worsted or wool, and many members of the purchasing public are unable to distinguish between such garments and garments manufactured from worsted or wool, the product of the fleece of the lamb or sheep. The rayon and acetate fabrics and all rayon fabrics sold and distributed by respondents simulate wool and worsted fabrics in texture and appearance. Consequently, garments made from such fabrics are accepted by many members of the purchasing public as wool products. Respondents do not disclose the true content of the fibers comprising their fabrics by labels or tags attached thereto or in any other manner. Such failure to identify the true fiber contents of such fabrics extends to the fabrics purchased by respondent corporation and moving from the dyers and finishers employed by said respondents to themselves in the City of New York, N. Y., and to the ultimate customers of said respondents, whether shipped by said dyers or by respondent corporation.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said rayon and acetate fabrics by wholesalers and manufacturers of wearing apparel, respondents have advertised in trade papers of general circulation certain of its rayon and acetate or all rayon fabrics as "Rayon Gabardine"—"Starred for Its Worsted Texture" and furnish, and have furnished, separate hang tags to its customers for affixing to finished products made from such rayon and acetate, or all rayon fabrics, reading in part "An Asheville Fabric with that Worsted Texture" without setting forth true fiber contents thereof. Such labels or tags are furnished by respondents to purchasers in quantities sufficient to separately label or tag all such finished units so manufactured and thereafter sold in commerce by respondents' customers to the retail trade, and the practice is and has been for such customers to so label and tag as aforesaid.

PAR. 6. In the course of soliciting and inducing business by said respondents, sample sales swatches of said rayon and acetate fabrics have, by them, been, and now are, introduced in commerce, attached to which are cards bearing the legend "Crush Resistant Suitings With That Worsted Texture."

PAR. 7. The use by respondents and their agents, dyers and finishers, of the term "Worsted" in the several manners and methods herein set forth serves as a representation to purchasers, manufacturers, as well as members of the consumer public, that such fabrics or products made therefrom are composed in whole or in part of worsted or wool. Said representations are false and misleading in that said acetate and rayon

fabrics or the products made therefrom contain no worsted or wool whatever, although finished in such fashion as to resemble wool or worsted.

PAR. 8. The word "Worsted" means primarily and popularly a yarn or fabric made wholly of wool, being the wool of sheep, the longer and better fibers of which are spun and woven into cloth or fabric favorably known to the purchasing public as "worsted"; being a term synonymous with wool. A substantial portion of the purchasing public prefers to purchase wearing apparel composed of fabrics made of wool or worsted as distinguished from wearing apparel made from other and non-wool fabrics, especially those made to simulate or imitate wool or worsted.

PAR. 9. Through the use of the term "worsted" in combination with other words and phrases descriptive of respondent's products, as above set forth, both in the use of labels or tags so furnished to customers and in the use of advertising as aforesaid, and in failing to identify the fibers of which its fabrics are composed by means of labels, tags or any other appropriate means, respondents have placed, and are now placing, in the hands of such manufacturers and the retailers of such products a means and instrumentality by which such manufacturers and retailers may and do mislead and deceive the purchasing public by representing that such rayon and acetate and all rayon fabrics are in fact composed of worsted or wool.

PAR. 10. The use by the respondents of the acts and practices hereinabove described, including the failure to disclose the identity of the fibers of which their said fabrics are composed, have the capacity and tendency to mislead and deceive the purchasing public into the erroneous and mistaken belief that products made of such fabrics are wool products and into the purchase of substantial quantities of such products because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 11. The aforesaid acts and practices of the respondents and each of them, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 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, the Federal Trade Commission, on June 17, 1952, issued and sub-

sequently served its complaint in this proceeding upon the respondents, Asheville Fabrics, Inc., a corporation, and Lawrence Herman, individually and as an officer of said corporation, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondents' answer, a hearing was held before a hearing examiner of the Commission theretofore duly designated by it, at which hearing there was incorporated into the record a stipulation as to the facts between counsel supporting the complaint and counsel for respondents, in lieu of all other evidence. On November 13, 1952, the hearing examiner filed his initial decision.

The Commission, having reason to believe that said initial decision did not constitute an adequate disposition of this matter, subsequently placed this case on its own docket for review, and on January 29, 1953, it issued, and thereafter served upon the parties, its order affording the respondents an opportunity to show cause why said initial decision should not be altered in the manner and to the extent shown in a tentative decision of the Commission attached to said order. Respondents having filed no objection in response to the leave to show cause, the proceeding regularly came on for final consideration by the Commission upon the record herein on review; and the Commission, having duly considered the matter 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, 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 Asheville Fabrics, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1407 Broadway, New York, New York. Lawrence Herman is named in the complaint as a respondent, individually and as an officer of respondent Asheville Fabrics, Inc. The record does not sustain the allegation as to respondent Lawrence Herman in his individual capacity, and therefore the complaint is being dismissed as to him in his individual capacity, but not in his capacity as an officer of respondent Asheville Fabrics, Inc. As used hereinafter, the term "respondent" does not include Lawrence Herman as an individual.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of converting and distributing rayon and acetate fabrics, the fabrics, when sold, being transported from respond-

ent's place of business in the State of New York to purchasers located in various other States of the United States. Respondent also causes such fabrics to be transported from various mills manufacturing them to the several places of business of respondent's dyers and finishers located in the States of New York and New Jersey, and thence to respondent's place of business in the State of New York and also to customers located in the various States of the United States other than the States of New York and New Jersey. There is now, and at all times mentioned herein has been, a course of trade by respondent in such fabrics in commerce between and among the various States of the United States, the volume of such trade being substantial.

PAR. 3. In the course and conduct of its business respondent is and has been in substantial competition with other corporations and with persons, firms, and copartnerships engaged in offering for sale and selling rayon and acetate and all-rayon fabrics in commerce between and among various States of the United States.

PAR. 4. Rayon and acetate are chemically manufactured fibers, and fabrics manufactured therefrom are capable of being finished so as to simulate wool and other natural fibers in texture and appearance. Garments manufactured from fabrics composed of rayon and acetate are likewise capable of having the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such garments and garments manufactured from wool. Respondent's fabrics simulate wool fabrics in texture and appearance, and in consequence garments made from such fabrics are accepted by many members of the purchasing public as wool products.

PAR. 5. The word "worsted" means primarily and popularly a yarn or fabric made wholly of wool, the product of the fleece of the lamb or sheep. There is a preference on the part of a substantial portion of the purchasing public for wearing apparel made from fabrics composed of wool or worsted, over wearing apparel made from other and non-wool fabrics, particularly those made to simulate wool or worsted.

PAR. 6. Respondents sells its fabrics principally to manufacturers of women's wearing apparel, such as suits and skirts. In promoting the sale of the fabrics, respondent has distributed among prospective purchasers sample swatches of the fabrics to which were attached cards bearing the legend "Crush Resistant Suitings With That Worsted Texture." Respondent has also supplied to its customers tags to be attached to finished garments manufactured by such customers and sold to retail stores. These tags read in part "An Asheville Fabric with that Worsted Texture." Respondent's customers have followed the practice of attaching these tags to the garments and the tags have thus found their way into the hands of retail stores and

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finally to the purchasing public. At no place on either these cards or tags or on any other tags or labels was there any disclosure by respondent of the materials of which the fabrics were made, rayon or acetate. The fabrics contained no wool whatever.

PAR. 7. The use by respondent of the word "worsted" as set forth above, the supplying by respondent to its customers of the tags in question, and the failure of respondent to disclose the fabric content of its fabrics had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's fabrics and the garments made therefrom, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such garments as a result of the erroneous and mistaken belief so engendered. Respondent's acts and practices served also to place in the hands of manufacturers and retailers of garments made from such fabrics a means and instrumentality whereby such manufacturers and retailers might be enabled to mislead and deceive the purchasing public. In consequence, substantial trade has been diverted unfairly to respondent from its competitors.

PAR. 8. The acts and practices in question have already been discontinued by respondent.

CONCLUSION

The acts and practices of respondent as hereinabove set out are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Asheville Fabrics, Inc., a corporation, its officers, and respondent Lawrence Herman as an officer of said corporation and their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "worsted" or any other word of similar import, either alone or in conjunction with other words, to designate or describe any product which is not composed entirely of worsted or wool; provided, however, that in the case of a product composed in part of worsted or wool and in part of other fibers, such word may be used as descriptive of the worsted or wool content if there are used in im-

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mediate conjunction therewith, in letters of at least equal size and conspicuousness, other words truthfully describing such other constituent fibers.

2. Offering for sale or selling products composed in whole or in part of rayon or of acetate, without clearly disclosing thereon or on tabs or labels attached thereto, such rayon or acetate content.

3. Supplying to or placing in the hands of others, for use in designating fiber content of respondent's fabrics or of garments made therefrom, tags, labels, or advertising material which misrepresent the fiber content of such fabrics or garments, or which fail to disclose any rayon or acetate content therein.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Lawrence Herman in his individual capacity.

It is further ordered, That respondent Asheville Fabrics, Inc., a corporation, and respondent Lawrence Herman as an officer of said corporation 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.

IN THE MATTER OF
TUNGSTEN CONTACT MANUFACTURING COMPANY
ET AL.

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

Docket 5835. Complaint, Dec. 26, 1950—Decision, Mar. 26, 1953

Where a firm engaged in buying, manufacturing and selling ignition parts for automobiles and, as thus engaged in the purchase in bulk of ignition points which bore no stamp, label or trade-mark and none of which were purchased from General Motors Corporation, The Electric Auto-Lite Company, or the Ford Motor Company or their authorized dealers—

- (a) Sold such ignition contact points, purchased untrademarked, but upon which, at the time of sale there appeared the trade marks of said manufacturers, as and for genuine Delco-Remy, Auto-Lite, and Ford points; and
- (b) Sold as and for genuine Auto-Lite and Delco-Remy parts such ignition points which were not in fact made by or for The Electric Auto-Lite Co. or the General Motors Corp.; and

Where a certain corporation and its controlling officer, engaged in the purchase of genuine Delco-Remy contact points, and in the purchase also from the aforesaid firm of such products which were not so represented—

- (c) Sold a quantity of said last-named points as and for genuine Delco-Remy, Auto-Lite, and Ford ignition points; admitting, extra judicially, to a New York police officer that he had been knowingly selling counterfeit points; and

Where an individual who dealt at wholesale in automotive parts, and purchased from aforesaid corporation ignition parts designated as Delco-Remy—

- (d) Sold and repurchased from the aforesaid corporation such points, after being informed of their counterfeit nature, and, following an interview with an attorney-investigator of the Commission and the storage by said individual for a few months, following his admitted persuasion of the counterfeit nature of said products, resumed and continued the sale thereof until his supply was exhausted; and

Where the aforesaid firm, corporation, and individuals, engaged as aforesaid in the interstate sale and distribution of said counterfeit ignition points in competition with others engaged in the sale and distribution of genuine and original automotive ignition points and replacement parts not falsely represented as such—

- (e) Placed thereby in the hands of dealers a means and instrumentality of deception regarding the source or origin of their said products;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that the ignition points and parts sold by them were made by or for the General Motors Corp., The Electric Auto-Lite