

Decision

IN THE MATTER OF

S. S. SAWYER, INC.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF THE
CLAYTON ACT, AS AMENDED

Docket 6103. Complaint, June 17, 1953—Decision, Oct. 1, 1953

Where a corporation engaged in the sale of potatoes, among other vegetables, to three principal kinds of buyers, namely, (1) agents to whom, as compensation for services rendered it paid a brokerage fee ranging from about 5¢ to about 10¢ per cwt. or equivalent amounts; (2) "buying agents", who also purchased for their own account for resale; and (3) other buyers, including some chain store organizations and food processors—

- (a) Paid to buying agents in connection with the sale of potatoes to them for their own account, a fee as brokerage, in the same manner as it paid a brokerage fee to them and to other agents for sales to buyers effected through them and in the same or substantially the same amounts;
- (b) Charged direct buyers, including some chain store organizations and food processors, prices which were lower than those charged other buyers purchasing at or about the same time, by amounts which were the same or substantially the same as the brokerage fees that it paid to its agents for effecting sales to buyers purchasing through them:

Held, That in paying such brokerage fees and in charging lower prices as above set forth to such buying agents and direct buyers, it violated subsec. (c) of Sec. 2 of the Clayton Act as amended.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.

Coxe & Stephens, of St. Augustine, Fla., for respondent.

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 October 1, 1953, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U. S. C., Sec. 13), the Federal Trade Commission on June

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17, 1953, issued and subsequently served its complaint in this proceeding upon S. S. Sawyer, Inc., a corporation, charging it with violation of subsection (c) of Section 2 of said Act as amended. Subsequent to the service of ample notice to all parties in conformity with law, a hearing for the taking of testimony and the reception of evidence was held in Washington, D. C., on the 18th day of August 1953. The respondent having failed to file its answer to the complaint (pursuant to the provisions of Rule VIII of the Commission's Rules of Practice), and having failed to make appearance at the aforesaid hearing of August 18, 1953, or in anywise to convey notice of its desire or intention to contest the allegations of the complaint, the provisions of Rule V (b) of the Commission's Rules prescribing procedure in event of default, became operative.

Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon said complaint and default, and the said hearing examiner having duly considered the entire record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent S. S. Sawyer, Inc., hereafter sometimes referred to as Sawyer, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida with its principal office and place of business located at Hastings, Florida.

Par. 2. Sawyer is now, and continuously for the seven or eight years last past has been, engaged in the business of selling potatoes and other vegetables. With respect to potatoes, Sawyer sells to three principal kinds of buyers.

Sawyer employs agents through whom it sells potatoes to some buyers. As compensation for services rendered in effecting such sales to such buyers, Sawyer pays such agents a brokerage fee. Such brokerage fees vary, ranging from about five cents to about ten cents per hundredweight, or amounts equivalent thereto.

In addition to selling potatoes to such buyers as agents of Sawyer, some of such agents (hereinafter sometimes referred to as "buying agents") also purchase potatoes from Sawyer for their own account for resale.

Sawyer also sells potatoes directly to other buyers, including some chain store organizations and food processors (hereinafter sometimes referred to as direct buyers).

Par. 3. In the course and conduct of such business, Sawyer causes such potatoes, so sold, to be transported from its place of business or

elsewhere in Florida to the places of business of such buyers, some of which are located in Florida and some of which are located elsewhere in the United States. All sales of potatoes by Sawyer, hereinafter referred to, involved such transportation from Florida to such buyers with places of business located elsewhere and occurred during approximately the two or three years last past.

PAR. 4. (A) Sawyer pays a fee as brokerage to buying agents in connection with the sale of potatoes to them for their own account in the same manner as it pays a brokerage fee to them and other agents for sales to buyers effected through them, and in the same or substantially the same amounts.

Illustrative of such sales were some of the transactions which took place during April and May of 1951 between Sawyer and one of its agents located in Baltimore, Maryland. In these transactions Sawyer invoiced such agent and such agent paid for potatoes at prices which were the same or substantially the same as those charged other buyers purchasing at or about the same time; but in connection with such sales of potatoes to such agent for his own account, Sawyer paid him brokerage in the same manner and in the same amounts as it paid him brokerage in connection with sales of potatoes to buyers, effected through him as its agent.

(B) In connection with sales of potatoes to direct buyers in some instances, instead of Sawyer making the payments of fees as brokerage alleged in subparagraph (A) above, it charges them prices which are lower than those charged other buyers purchasing at or about the same time. The prices are lower by amounts which are the same or substantially the same as the brokerage fees that Sawyer pays to its agents for effecting sales to buyers purchasing through them.

Illustrative of such sales were transactions which took place during April and May of 1951 between Sawyer and several direct buyers, including chain store organizations and food processors. In these transactions Sawyer invoiced such buyers at, and such buyers paid, prices which varied from time to time; but such prices were lower by amounts ranging from about five to ten cents per hundredweight than those at which other buyers purchasing at or about the same times were invoiced and paid.

PAR. 5. In making payments of fees as brokerage, as alleged in Paragraph 4 (A), and in charging lower prices, as alleged in Paragraph 4 (B), Sawyer paid or granted, in the course and conduct of its business in commerce, something of value as a commission, brokerage, or other compensation, and allowances and discounts in lieu thereof, in connection with the sale of potatoes to the other parties to such transactions, or to their agents, representatives or other intermediaries

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therein who were acting in fact for or in behalf, or subject to the direct or indirect control, of such other parties.

CONCLUSION

The acts and practices of the respondent, as herein found, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, Section 13).

ORDER

It is ordered, That the respondent, S. S. Sawyer, Inc., a corporation, and its officers, directors, representatives, agents or employees, directly or through any corporate or other device, in connection with the sale of potatoes or any other vegetable in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Making payments to agents on purchases for their own accounts in amounts which are the same as the amounts of fees paid as brokerage to agents effecting sales to other purchasers, or in any other amounts which are also paid as brokerage.

2. Granting a discount or allowance to any purchaser which makes the price to such purchaser lower than the prices at which sales are made to other purchasers, by any amount which is the same as the amount of brokerage fees paid to agents effecting sales to other purchasers, or in any other amounts which also are in lieu of brokerage.

3. Paying or granting anything of value as a commission, brokerage, or other compensation or allowance or discount in lieu thereof to the other parties to such transactions, or to their agents, representatives, or other intermediaries therein who in fact act for or in behalf, or are subject to the direct or indirect control, of such other parties.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of October 1, 1953].

Consent Settlement

IN THE MATTER OF

ANNSHIRE GARMENT CO., INC., ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT

Docket 6110. Complaint, July 21, 1953—Decision, Oct. 1, 1953

Where a corporation and its two officers engaged in the manufacture and interstate sale and distribution of certain 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 said coats in that tagged or labeled "100% Wool," they contained substantial quantities of fiber other than wool; and
- (c) Misbranded certain of said coats in that the fiber content of interlinings contained therein were not separately set forth on attached labels or tags as required:

Held, That such acts and practices were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce.

Mr. George E. Steinmetz for the Commission.

Keller & Wilbert, of Pittsburgh, Pa., for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on July 21, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure, provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on October 1, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

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1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in Paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Annshire Garment Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kansas; and respondents Isidore Liebling and Jack Liebling are the president-treasurer, and secretary, respectively, thereof. Said individuals formulate, direct and control the acts, policies and practices of said corporate respondent. The offices and principal place of business of all respondents are located at 101 East Kansas Avenue, Pittsburg, Kansas.

PAR. 2. Subsequent to the effective date of said Wool Products Labeling Act of 1939, and more especially since 1947, 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 described as ladies' coats were misbranded in that they were not stamped, tagged or labeled as required by the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the meaning and intent of Section 4 (a) (1) of said Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated there-

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under in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' coats tagged or labeled "100% Wool"; whereas in truth and in fact said wool products were not 100% wool, but contained substantial quantities of fibers other than wool.

PAR. 5. Certain of said wool products described as ladies' coats were misbranded in that the fiber content of interlinings contained therein were not separately set forth on labels or tags attached thereto as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and Rule 24 of the Rules and Regulations promulgated thereunder.

CONCLUSION

The acts and practices of the respondents, as herein found, were and are in violation of the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated thereunder; and as such, constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondent Annshire Garment Co., Inc., a corporation, and its officers, and respondents Isidore Liebling and Jack Liebling, individually, 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 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 falsely identifying such products as to the character or amount of the constituent fibers contained 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

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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 percentages 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 delivering 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 by Rule 24 of the Rules and Regulations promulgated under 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 the 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 the order to cease and desist.

Annshire Garment Co., Inc.,
a corporation.

By /s/ Isidore Liebling

(Name)

President

(Title)

(Corporate Seal)

/s/ Isidore Liebling

Isidore Liebling, individually and as an officer of Annshire Garment Co., Inc., a corporation.

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/s/ Jack Liebling

Jack Liebling, individually and as an officer of Ann-shire G a r m e n t Co., Inc., a corporation.

Date: September 18, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 1st day of October, 1953.

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IN THE MATTER OF
ARTHUR DOCTOR ET AL. TRADING AS
ARTHUR DOCTOR & CO.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6120. Complaint, Aug. 25, 1953—Decision, Oct. 1, 1953

Where three partners engaged in the manufacture and interstate sale and distribution of certain wool products as defined in the Wool Products Labeling Act—

- (a) Misbranded certain ladies' or misses' 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 coats in that they were tagged as containing "100% Cashmere" and "100% Imported Cashmere," whereas they did not contain any of the hair of the cashmere goat but were made from fabrics composed of a mixture of sheep's wool, silk fibers and rabbit hair;
- (c) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Cashmere" when they were manufactured from fabrics composed of a blend of cashmere combined with the wool of the sheep;
- (d) Misbranded certain of such coats in that they were labeled or tagged as containing "100% Virgin Wool," and, separately, as "Imported Cashmere," whereas they were manufactured from fabrics composed of a blend of wool of the sheep, silk fibers and rabbit hair; and
- (e) Misbranded certain of said products in that the percentages or amounts of the constituent fibers, cashmere and sheep wool, were not separately set forth on stamps, tags, etc., as required by the Rules and Regulations promulgated pursuant to said Act:

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 and deceptive acts and practices in commerce.

Mr. George E. Steinmetz for the Commission.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on August 25, 1953, issued and subsequently served its complaint upon the respondents named in the caption hereof, charging

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on October 1, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.