

IN THE MATTER OF
COUNTRY TWEEDS INCORPORATED AND MARCUS
WEISMAN

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 5957. Complaint, Feb. 21, 1952—Decision, Nov. 25, 1953

Where a corporation and its secretary-treasurer, who formulated its policies and directed and controlled all its practices, engaged in the manufacture and competitive interstate sale and distribution of women's coats, including its "Kashmoor" line in which the fabric of the coat, containing no Cashmere, was composed of 80% wool (Alpaca, mohair, and sheep's wool) and 20% nylon—

Made use, without more, of the legend "An exclusive fabric—KASHMOOR—Country Tweeds" on the permanent labels affixed by them to their said coats, as distinguished from the temporary tag attached to the coat in compliance with the Wool Products Labeling Act:

Held, That such acts and practices of the respondents, under the circumstances set out, were all to the prejudice of the public and of respondents' competitors, and 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.

Barshay & Frankel, of New York City, for respondents.

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 February 21, 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 methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answer to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing examiner of the Commission, theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the said hearing examiner, on April 17, 1953, filed his initial decision.

Within the time permitted by its Rules of Practice, the Commission, having reason to believe that said initial decision did not constitute an adequate disposition of the proceeding, issued an order placing

this case on its docket for review, served on all parties its tentative decision herein and granted to them permission to file with the Commission any objections they might have to said tentative decision. None of the parties having filed any objections to said tentative decision, this proceeding regularly came on for final consideration before the Commission upon the aforesaid complaint and respondents' answer thereto; 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 being of the opinion that the hearing examiner's initial decision does not constitute an adequate disposition of this proceeding, makes this its findings as to the facts, conclusions and order to cease and desist, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Country Tweeds Incorporated 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 250 West 39th Street, New York, New York. Respondent Marcus Weisman is secretary and treasurer of the corporation, and formulates its policies and directs and controls all of its practices. Respondents are engaged in the manufacture and sale of women's coats.

PAR. 2. Respondents cause their coats, when sold, to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain a course of trade in their coats in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the sale and distribution of their coats, respondents are in substantial competition with other corporations and individuals engaged in the sale and distribution of women's coats in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. (a) Among the various lines of coats manufactured and sold by respondents is one designated by the trade name "Kashmoor," and it is this trade name which forms the subject matter of the present proceeding. The complaint charges in substance that the name is false and misleading in that it constitutes a representation that the coats so designated are made in whole or in substantial part of cashmere, the wool of the Tibetan or Kashmir goat.

(b) The fabric used in the coats is made to respondents' order by a fabric manufacturer. It is composed of 80 percent wool (alpaca,

mohair and sheep's wool) and 20 percent nylon. It contains no cashmere. The alpaca and mohair lend softness to the fabric, while the nylon increases its durability.

(c) This particular coat was first placed on the market by respondents early in 1950. In searching for a name for the coat respondents or their attorney came upon the name "Kashmoor," which had at one time been the property of another company, Cohen Brothers Corporation. This company had been ordered by the Commission, in 1938, to stop using "Kashmoor" to refer to knitted outerware not made from the wool of the Tibetan or Cashmere (i. e., Kashmir) goat. Upon ascertaining that this company had gone out of business, respondents adopted the name for their coat. While registration of the name has been applied for by respondents, the registration had not been consummated at the time the hearings in the present case were held. It appears, however, that respondents have been successful, through injunction proceedings, in preventing the use of the name or a substantially similar name by another manufacturer.

(d) Since their adoption of the name early in 1950, respondents have featured it both in the label affixed to the coats and in newspaper and magazine advertisements of the coats. In addition to their own advertising, respondents frequently share in the cost of local newspaper advertising of the coats done by their customers (retail stores). While respondents supply to their customers copies of their own advertisements and other suggested advertising material, they do not undertake to censor or supervise the stores' advertising in detail. The record indicates, however, that the stores do follow the general theme used by respondents in their own advertising.

(e) Respondents' advertisements feature the name "Kashmoor" and include such statements as "Soft as Cashmere, Durable as Nylon," "New Coat Fabric Created by Strass-Einiger Exclusively for Famous Country Tweeds Classics," "For the first time—a fabric that so closely resembles costly Cashmere—you can't tell the difference until you see the modest price-tag and marvel at the wear!", and "KASHMOOR, made of 80% precious wool fibers, 20% Dupont nylon staple, has the luxurious softness and feel of Cashmere yet it costs three times less * * * gives five times the wear."

PAR. 5. (a) Ten women members of the public testified with respect to the impression gained by them from reading respondents' advertisements, five of the witnesses being offered in support of the complaint and five by respondents. The testimony of the first group was, in substance, that upon examining the advertisements and seeing the featured name "Kashmoor" their first impression was that the coats contained cashmere, but upon reading further this impression

was dispelled. The testimony of the second group was, in substance, that neither the name Kashmoor nor any other part of the advertisements caused them to think the coats contained cashmere. On the whole, the testimony of the public witnesses would appear to be of doubtful probative value and of little assistance in resolving the issue as to whether the trade name Kashmoor implies cashmere. The issue would appear to be one which must be resolved upon the basis of an examination and consideration of the name itself and the attendant facts and circumstances.

(b) It seems clear that the name Kashmoor suggests the word cashmere, the two words being almost identical in sound. Further, the name Kashmoor closely resembles, not only in sound but in spelling as well, the word Kashmir, which is the name of one of the regions where the Cashmere goat is found. Assuming that members of the public seeing the current advertisements of respondents and their customers would read the advertisements in their entirety and, therefore, be informed as to the fiber content of the coats, there is no assurance that future advertisements will include such information. Moreover, the permanent label affixed by respondents to the coats (not to be confused with the temporary tag attached to the coats in compliance with the Wool Products Labeling Act) contains no information as to fiber content, but reads simply "An exclusive fabric—KASHMOOR—Country Tweeds." It is, therefore, concluded that the use of the name Kashmoor implies a cashmere fiber content and has the tendency and capacity to cause a substantial portion of the public to believe that coats so designated contain at least some cashmere fiber.

(c) The hearing examiner, in reaching the same conclusion and recommending the same order as contained herein, found that cashmere means a fine, soft dress fabric in addition to meaning the wool of the Tibetan or Kashmir goat. The undisputed evidence is that genuine cashmere fibers come from the fleece or hair of the Tibetan or Cashmere goat. Respondent Weisman testified that in the trade fabrics made of this fiber are referred to as "real" or "genuine" cashmere. His testimony and dictionary and encyclopedia definitions in the record indicate that a custom has grown up in the textile trade of referring to certain soft, fine dress fabrics of a texture similar to those made of genuine cashmere fibers, as cashmere. Respondent Weisman's testimony relates to the trade meaning as contrasted with the purchasing public's understanding of these terms.

The testimony of the consumer witnesses clearly indicates that they were of the opinion that a cashmere coat would contain a specific fine, soft fiber called cashmere. Even those who testified that Kashmoor did not imply cashmere to them showed that they did not believe that

coats made of fabrics with the composition of the Kashmoor coats were cashmere. The Commission is of the opinion that a substantial portion of the purchasing public would believe that a coat labeled "Cashmere" would contain genuine cashmere fibers. Insofar as the hearing examiner found to the contrary, his finding was in error.

PAR. 6. (a) Next presented is the question of the remedy necessary to prevent such a false and misleading implication. The theory of the complaint is that nothing short of complete excision of the trade name will suffice. Respondents, on the other hand, protest vigorously against excision of the name. They point out that the name constitutes a valuable business asset, that large sums have been expended in advertising it, and that to deprive them of it would cause them serious financial loss. Respondents express willingness, in the event the name is held to be misleading, to use in connection with it such qualifying or clarifying language as may be necessary to prevent such effect.

(b) If the trade name were "Cashmere" itself, the absolute excision would appear to be inescapable. A complete contradiction of terms such as "Cashmere—contains no cashmere" would not clarify the meaning but would only tend to confuse. However, this is not true of the phrase "Kashmoor—contains no cashmere." While the trade name Kashmoor is a simulation of cashmere and while its use falsely implies a cashmere content in the garments so labeled, it is subject to clarification. An explanation that the garment so labeled is designed to imitate cashmere in appearance and softness, but does not contain any cashmere fibers, is not a flat contradiction of terms, but is a reasonable explanation which would remove the capacity and tendency toward deception inherent in the trade name Kashmoor used alone.

(c) In determining the appropriate remedy in such cases the right of the public and of competitors to adequate protection must be weighed against the injury to the respondent through loss of the trade name, and every effort made to reach a solution which will be fair to all parties, which will afford the public and competitors reasonably adequate protection and which, at the same time, will avoid unnecessary hardship and loss to the owner of the trade name. Trade names are valuable business assets, and should never be prohibited absolutely if less drastic measures will suffice. If reasonably possible, the trade name should be saved. *Jacob Siegel Company v. F. T. C.*, 327 U. S. 608. It is concluded that here the excision of the name would not be warranted: that adequate protection will be afforded the public and respondents' competitors if when the name is used, either on labels or in advertising, there is clearly and conspicuously disclosed the fact that the coats contain no cashmere.

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Order

PAR. 7. The use by respondents of the trade name Kashmoor, without adequate clarification, to designate and describe their coats has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such coats contain cashmere, and the tendency and capacity to cause such members of the public to purchase such coats as a result of such belief, thereby causing substantial trade to be diverted unfairly to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents as hereinabove set out are all to the prejudice of the public and of respondents' 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 Country Tweeds Incorporated, a corporation, and its officers, and respondent Marcus Weisman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' coats designated Kashmoor coats, or any coats of substantially similar composition, do forthwith cease and desist from:

Using the word "Kashmoor" to designate, describe or refer to such coats, unless when such word is used, whether on labels or in advertising, other words are used which clearly and conspicuously disclose that such coats contain no cashmere.

It is further ordered, That the respondents 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
SEYMOUR SALES COMPANY AND SEYMOUR AND
FLAVIA GALTER

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6060. Complaint, Nov. 18, 1952—Decision, Nov. 25, 1953

Where a corporation and its owner engaged in the interstate sale and distribution of cameras, pens, and other articles of merchandise—
Allotted as premiums or prizes to the operators of their push cards and to members of the consuming public who purchased chances on the cards; and
Thereby supplied to and placed in the hands of others the means of conducting games of chance, gift enterprises, or lottery schemes, contrary to the public interest and an established public policy of the United States Government:
Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Koven, Koven & Salzman, of Chicago, Ill., for respondents.

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 November 18, 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 acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel (oral argument not having been requested), and said hearing examiner, on July 30, 1953, filed his initial decision herein.

Within the time permitted by the Commission's Rules of Practice, respondents filed an appeal from said initial decision, and the Commis-