

Consent Settlement

IN THE MATTER OF

HARRY BERNSTEIN & SONS, INC., ET AL.

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

*Docket 6182. Complaint, Feb. 18, 1954—Decision, Apr. 15, 1954*

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 men's suits in violation of said Act and the Rules and Regulations promulgated thereunder in that, labeled or tagged as consisting of "100% Wool", they contained in addition to wool a substantial quantity of non-woolen fibers;
- (b) Misbranded such suits in that labels attached thereto were neither clear, distinct, nor plainly legible, as required by Rule 5 of said Rules and Regulations; and
- (c) Misbranded certain samples, swatches, or specimens of woolen fabrics in that they were not marked, tagged, or labeled to show their fiber content and other information required by law:

*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.

Before *Mr. Webster Ballinger*, hearing examiner.

*Mr. George E. Steinmetz* for the Commission.

*Mr. Louis Epstein*, of New York City, for respondents.

CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission on February 18, 1954, issued and subsequently served its complaint upon 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 consent settlement procedure, provided in Rule V of the Commission's

<sup>1</sup> The Commission's "Notice" announcing and promulgating the consent settlement 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 April 15, 1954, and ordered to be of record as the Commission's findings as to the facts, conclusions, 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.

Rules of Practice, solely for the purpose 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 heretofore filed and which answer, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent 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. Agree 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, are as follows:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Harry Bernstein & Sons, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. Harry Bernstein is president, Herbert Bernstein is secretary, and Leon Bernstein is treasurer of said respondent corporation. These 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 104 Fifth Avenue, New York 11, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1951, respondents have manufactured for introduction into commerce, introduced, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act, wool products, as "wool products" are defined therein.

3. Certain of said wool products were misbranded within the meaning and meaning of Section 4 (a) (1) of said Wool Products Labeling Act, and of the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect

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to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were men's suits labeled or tagged by respondents as consisting of 100% wool; whereas, in truth and in fact, said wool products did not consist of 100% wool but contained, in addition to wool, a substantial quantity of nonwoolen fibers.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (2) of said Wool Products Labeling Act, and of the Rules and Regulations promulgated thereunder.

Among such misbranded wool products were men's suits bearing labels or tags attached by respondents which were neither clear, distinct nor plainly legible as required by Rule 5 of the Rules and Regulations promulgated pursuant to said Act in that they were blurred, indistinct or illegible.

PAR. 5. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (2) of said Wool Products Labeling Act and Rule 22 of the Rules and Regulations promulgated thereunder; in that certain samples, swatches, or specimens of woolen fabrics circulated in commerce by respondents for the purpose of promoting and furthering sales, were neither marked, tagged, nor labeled to show their respective fiber content and other information required by law.

## CONCLUSION

The acts and practices of the respondents, as herein found, were in violation of the Wool Products Labeling Act of 1939, and of the Rules and Regulations pursuant thereto, and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

*It is ordered*, That the respondent Harry Bernstein & Sons, Inc., a corporation, and its officers, and respondents Harry Bernstein, Herbert Bernstein and Leon Bernstein, 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 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 men's suits 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,"

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“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 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 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. Using stamps, tags, labels or other means of identification upon such wool products, which are blurred, indistinct or illegible.

4. Using any samples, swatches or specimens of wool products with which to promote sales in commerce, unless labeled or marked to show their respective fiber content and other information required by law.

*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.

Harry Bernstein & Sons, Inc.,  
a corporation.

By /s/ Harry Bernstein,

*President.*

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/s/ Harry Bernstein,  
Harry Bernstein, individually  
and as an officer of Harry Bernstein & Sons, Inc., a corporation.

/s/ Herbert Bernstein,  
Herbert Bernstein, individually  
and as an officer of Harry Bernstein & Sons, Inc., a corporation.

/s/ Leon Bernstein,  
Leon Bernstein, individually and  
as an officer of Harry Bernstein & Sons, Inc., a corporation.

Date: April 2, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 15th day of April 1954.

IN THE MATTER OF  
A. ELGART & SONS, INC., ET AL.

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

*Docket 6186. Complaint, Mar. 4, 1954—Decision, Apr. 20, 1954*

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 men's overcoats in that they did not have affixed thereto stamps, tags, labels, or other means of identification showing the percentage of the fiber weight of wool, fiber other than wool, and other information called for under the Act; and
- (b) Misbranded said overcoats in that, labeled or tagged as consisting of "100% All Wool", they contained substantial quantities of reprocessed wool or were composed entirely of such 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 and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

*Mr. George E. Steinmetz* for the Commission.

*Mr. James E. Markham*, of Washington, D. C., for respondents.

CONSENT SETTLEMENT <sup>1</sup>

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, the Federal Trade Commission, on March 4, 1954, issued and subsequently served its complaint upon 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 consent settlement procedure, provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, and review thereof, and the enforcement of the order consented to, and

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<sup>1</sup> 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 April 27, 1954, and ordered entered of record as the Commission's findings as to the facts, conclusions, 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.

conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent 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. Agree 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, are as follows:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent A. Elgart & Sons, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York. Nelson Elgart is President, Benjamin Elgart is Vice-President, and Philip Elgart is Secretary and Treasurer of said respondent corporation. These individuals formulate, direct and control the acts, practices, and policies of said corporate respondent. The office and principal place of business of all respondents are located at 890 Broadway, New York 7, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1952, respondents have manufactured for introduction into commerce, introduced, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in said Wool Products Labeling Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products described as men's overcoats were misbranded within the intent and meaning of Section 4 (a) (2) of said Wool Products Labeling Act, and of the rules and regulations promulgated thereunder.

PAR. 4. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and of the rules and regulations promulgated 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 such misbranded wool products were men's overcoats labeled or tagged by respondents as consisting of "100% All Wool"; whereas, in truth and in fact, said wool products did not consist of 100% wool or all wool, but contained, in addition, substantial quantities of reprocessed wool; else were composed entirely of reprocessed wool, as the terms "wool" and "reprocessed wool" are defined in said Act and 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 pursuant thereto, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

#### ORDER TO CEASE AND DESIST

*It is ordered*, That the respondent A. Elgart & Sons, Inc., a corporation, and its officers, respondents Nelson Elgart, Benjamin Elgart, and Philip Elgart, 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 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 men's overcoats or other "wool products," as such products are defined in and are 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 products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4)

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each fiber other than wool where said percentage by weight is five percentum or more, and (5) the aggregate of all other fibers.

(b) The maximum percentage of the total weight of such wool products of any non-fibrous loading, filling, or adulterating material.

(c) The name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool products 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.

Providing 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.

Providing further, that nothing contained in this order shall be construed as limiting any applicable provision 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.

A. Elgart & Sons, Inc.,  
a corporation.

By /s/ Nelson Elgart,  
*President.*

/s/ Nelson Elgart,  
Nelson Elgart, individually  
and as an officer of A. Elgart  
& Sons, Inc., a corporation.

/s/ Benjamin Elgart,  
Benjamin Elgart, individu-  
ally and as an officer of A.  
Elgart & Sons, Inc., a cor-  
poration.

/s/ Philip Elgart,  
Philip Elgart, individually  
and as an officer of A. Elgart  
& Sons, Inc., a corporation.

Date: March 31, 1954.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 20th day of April 1954.

IN THE MATTER OF  
E. T. MOYE TRADING AS MOYE PHOTOGRAPHERS

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

*Docket 6101. Complaint, May 21, 1953—Decision, Apr. 23, 1954*

Where an individual with studio and principal place of business in Washington, D. C., engaged in the interstate sale and distribution of photographs through sales agents who called upon prospective customers and solicited orders through one or more of several sales agreements, sometimes designated by him as certificates or advertising offers, and through oral representations—

- (a) Represented through such agents that a "portrait," as described in said sales agreement, would be made for \$2.95, the representative to be paid \$1.75 or \$1.95 as the case might be, balance to be paid photographer at time of appointment, that about six proofs would be shown, and, as stated by said agents, that the pictures would be taken within a few days at a definite time fixed; the facts being that at different times his representatives failed to take the pictures as agreed or to deliver proofs when taken or finished pictures as promised or within a reasonable time; sometimes made no delivery of proofs or pictures until long after time promised and then only as a result of persistent demands; in other cases made no such delivery; frequently, where either no pictures were taken or proofs or pictures delivered and customers were required to go to his studio for the pictures, refused to refund the initial payment; sometimes declined to deliver proofs unless the customer made a deposit on additional pictures to be purchased; in some instances when pictures were not delivered and deposits not returned, customers were compelled to resort to the Small Claims Court in order to protect their rights and obtain a refund; and he sometimes failed to furnish promised proofs; and
- (b) Represented, in soliciting over the phone, that the customer, upon answering correctly a simple question, would receive free one 8 x 10 silvertone portrait; following which answer the salesman, calling to make an appointment and give the customer a certificate entitling him to sittings at the studio, always collected \$1.00 "service" charge, and, when the pictures were taken, required the payment of an additional sum of \$3.00 in order to obtain the pictures, failing which, no portraits or pictures were delivered or refund made of said additional payment, thus exacted:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Everett F. Haycraft*, hearing examiner.

*Mr. Ames W. Williams* for the Commission.

*Mr. E. T. Moye*, of Silver Spring, Md., and *Mr. David I. Abse*, of Washington, D. C., for respondent.