

Complaint

IN THE MATTER OF

MATTHEW HUTTNER ET AL. TRADING AS PYRAMID
BOOKSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6307. Complaint, Mar. 8, 1955—Decision, June 25, 1955

Consent order requiring book sellers in New York City to cease selling their book reprints without adequately disclosing that they were abridgements and frequently sold under different titles from those under which the books were originally published.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. William L. Pencke and *Mr. William M. King* for the Commission.

Mr. Leroy E. Rodman, of New York City, for respondents.

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 Matthew Huttner and Alfred R. Plaine, copartners trading under the firm name and style of Pyramid Books, 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. Respondents Matthew Huttner and Alfred R. Plaine are co-partners, trading and doing business under the firm name and style of Pyramid Books with their office and principal place of business located at 444 Madison Avenue, New York 22, New York.

PAR. 2. Respondents are now and for more than two years last past have been, engaged in the business of selling and distributing books through their agent or consignee, the Kable News Co., causing said books, when sold, to be transported from the place of business of said Kable News Co. in the State of New York to the purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade in said books in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Among the books sold by respondents as aforesaid, are reprints of books from which portions of the text have been deleted; and there are certain other reprints sold as aforesaid which bear different titles from those under which such books were originally published. Respondents disclose the fact of such abridgement by printing the word "Abridged" in small inconspicuous letters on the lower right corner of the front cover and on the lower left corner of the back cover of said books. Respondents do not give any notice of abridgement on the title page of the said books. In the case of the reprints bearing new titles, the new titles are printed in large white letters on dark backgrounds on the front cover and the original title is printed in small, inconspicuous type, in dark ink, under the new title. The original title is also printed, in parenthesis, under the new title on the title page of these books but in much smaller type and in a much less conspicuous manner than the new title, and without any reference to the fact such title is the title under which the book was originally published.

Through the use of the new titles in place of the original titles, in the manner aforesaid, respondents thereby represent or imply that said books are new books published under the titles set out thereon.

PAR. 4. The said disclosures on the front and back covers of respondents' said books that such books are abridged, and the manner in which the new titles are set out in relation to the original titles, do not constitute adequate notice of such abridgement or the fact that said books are reprints under a new name, in that, such disclosures are not noticeable to the average purchaser and are not displayed in such a manner or position as readily to attract the attention of prospective purchasers. Moreover, the appearance of the original title in parentheses and in small inconspicuous type, as aforesaid, has the tendency and capacity to lead some members of the purchasing public into the mistaken belief that said title is a subtitle and not the title under which the same book was published originally.

PAR. 5. In the course and conduct of said business respondents have been and are in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale of books.

PAR. 6. The failure of respondents to make adequate disclosure that certain of their books are abridgements and that books to which they have given new titles are not different from the books of which they are reprints, has had, and now has, the tendency and capacity to lead a substantial portion of the purchasing public into the mistaken and erroneous belief that said books are complete and unabridged or are new and original publications, and to induce a substantial portion of said

public to purchase respondents' said books in commerce because of said erroneous and mistaken belief. As a result thereof trade has been and is unfairly diverted from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents 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 the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Sec. 3.21 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 June 25, 1955, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents Matthew Huttner and Alfred R. Plaine, copartners trading under the firm name of Pyramid Books, located at 444 Madison Avenue, New York, New York, with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of books without making adequate disclosures that certain of said books are abridgements or that they have been given new titles different from the books of which they are reprints.

In lieu of submitting answer to said complaint, respondents entered into a stipulation for a consent order with counsel in support of the complaint, which was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said stipulation that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said stipulation, the respondents admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said stipulation all parties expressly waived the filing of answer, a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the

Order

51 F. T. C.

filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said stipulation, respondents further agreed that the order to cease and desist, issued in accordance with said stipulation, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said stipulation, together with the complaint, shall constitute the entire record herein, that the complaint herein may be used in construing the terms of the order issued pursuant to said stipulation, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such stipulation and the order therein contained, and, it appearing that said stipulation and order provides for appropriate disposition of this proceeding, the same is hereby accepted and made a part of the record and in consonance with the terms of said stipulation the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That the respondents Matthew Huttner and Alfred R. Plaine, individually and as copartners trading under the firm name of Pyramid Books or any other trade name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of books in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any abridged copy of a book unless one of the following words, namely, "abridged," "abridgement," "condensed" or "condensation," or any other word or phrase stating with equal clarity that said book is abridged, appears in clear conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the title or in another position adapted readily to attract the attention of a prospective purchaser.

1261

Order

2. Using or substituting a new title for, or in place of, the original title of a reprinted book unless a statement which reveals the original title of the book and that it has been previously published thereunder appears in clear, conspicuous type upon the front cover and upon the title page of the book, either in immediate connection with the new title or in another position adapted readily to attract the attention of a prospective purchaser.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 [as required by said declaratory decision and order of June 25, 1955].

IN THE MATTER OF

HENRY R. FISHER ET AL. TRADING AS H. FISHER

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6316. Complaint, Mar. 22, 1955—Decision, June 25, 1955

Consent order requiring manufacturers in Philadelphia, Pa., to cease violating the Wool Products Labeling Act by misstating the fiber content on tags or labels on girls' and misses' coats, failing to set forth separately the fiber content of interlinings, and otherwise failing to comply with the labeling requirements of the Act.

Before *Mr. John Lewis*, hearing examiner.

Mr. Roslyn D. Young, Jr. for the Commission.

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 Henry R. Fisher and Isadore Fisher, as individuals and copartners, trading as H. Fisher, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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. Respondents, Henry R. Fisher and Isadore Fisher, as individuals and copartners, are trading as H. Fisher, with their principal office and place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1954, respondents have manufactured for introduction into commerce, introduced in commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and 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 products were girls' and misses' coats labeled or tagged by respondents as containing "35% Wool" and "65% Reprocessed Wool"; whereas, in truth and in fact said products did not consist of 35% wool and 65% reprocessed wool as defined in said Act, but contained 20% wool, 20% reprocessed wool, 56% reused wool and 4% other fibers.

PAR. 4. Certain of said wool products described as girls' or misses' coats were misbranded in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of said Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said wool products described as girls' or misses' coats were further misbranded by respondents within the intent and meaning of the Wool Products Labeling Act in that the fiber content of interlinings contained in said coats were not separately set forth on labels or tags attached thereto as required by Rule 24 of the Rules and Regulations promulgated under said Act.

PAR. 6. The acts and practices of the respondents as hereinabove alleged were in violation of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, 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

Pursuant to Sec. 3.21 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 June 25, 1955, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 22, 1955, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. After being duly served with said complaint, the respondents appeared and filed their answer thereto. Thereafter they entered into a stipulation with counsel supporting the complaint, pro-

Order

51 F. T. C.

viding for the withdrawal of said answer and for the entry of a consent order disposing of all the issues in this proceeding. Said stipulation has been submitted to the above-named hearing examiner, heretofore duly designated by the Commission, for his consideration in accordance with Rule V of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid stipulation, have admitted all the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that all parties expressly waive a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents have also agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, and specifically waive any and all right, power, or privilege to challenge or contest the validity of said order. It has been further stipulated and agreed that the complaint herein may be used in construing the terms of the order provided for in said stipulation.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid stipulation for consent order, dated April 26, 1955, the answer previously filed by respondents being hereby deemed withdrawn, and it appearing that said stipulation provides for an appropriate disposition of this proceeding, the same is hereby accepted and ordered filed as part of the record herein by the hearing examiner, who makes the following findings, for jurisdictional purposes and order:

1. Respondents are now and have been at all times mentioned in the complaint herein, a partnership, with their office and principal place of business located at 147 North 10th Street, Philadelphia, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents, Henry R. Fisher and Isadore Fisher, individually and as copartners, trading as H. Fisher, or under any other name, and respondents' representatives, agents and em-

employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or 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 girls' or misses' 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 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 percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) such 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 products, 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 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.

ORDER TO FILE REPORT OF COMPLIANCE

It is 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 [as required by said declaratory decision and order of June 25, 1955].

Complaint

IN THE MATTER OF

WINER MANUFACTURING CO., INC., ET AL.

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

Docket 6317. Complaint, Mar. 23, 1955—Decision, June 28, 1955

Consent order requiring a manufacturer in Hammond, Ind., to cease violating the Wool Products Labeling Act by labeling men's jackets consisting of 35% wool and 65% reused wool as "100% Wool", and failing to label others as required by the Act.

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

Mr. George E. Steinmetz for the Commission.

Abbell & Abbell, of Chicago, Ill., 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 Winer Manufacturing Co., Inc., a corporation, and Louis Winer, individually and as an officer 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 Winer Manufacturing Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Indiana. Louis Winer is president of said respondent corporation and this individual formulates, directs, and controls the acts, policies, and practices of said corporate respondent. The office and principal place of business of said respondents is located at 231 Condit Street, Hammond, Indiana.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January 1954, 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 said Act, wool products, as "wool products" are defined therein.

PAR. 3. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that