

Complaint

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IN THE MATTER OF

AMERICAN STAINLESS KITCHEN COMPANY, INC.,
ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6294. Complaint, Feb. 18, 1955—Decision, Aug. 3, 1955*

Consent order requiring sellers in Milwaukee, Wis., to cease making false claims for the health-inducing properties of their stainless steel cooking utensils and with disparaging competitive aluminum products.

Before *Mr. John Lewis*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Kelley, Drye, Newhall & Maginnes, 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 American Stainless Kitchen Company, Inc., a corporation, and Wesley A. Ryan, Frank W. Ladky and Randall G. Taylor, individually and as officers 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 thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent American Stainless Kitchen Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 161 West Wisconsin Avenue, Milwaukee, Wisconsin. Respondents Wesley A. Ryan, Frank W. Ladky and Randall G. Taylor are the officers of corporate respondent. These individuals formulate and control the policies, activities and practices of the corporate respondent, including the acts and practices herein-after alleged. The address of respondent Wesley A. Ryan is Room 303, Eighteen West Cheltenham (Germantown) Philadelphia, Pennsylvania. The address of respondents Frank W. Ladky and Randall G. Taylor is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for more than three years last past have been engaged in the sale and distribution of stainless steel cooking utensils in commerce between and among the various States of the United States. Respondents cause and have caused said products, when sold to be shipped from Sheboygan, Wisconsin, where they are

manufactured for respondents by the Polar Ware Company, to purchasers thereof located in other States of the United States. The volume of business of respondents in said cooking utensils in commerce is now and has been substantial.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now and have been in substantial competition with other corporations and parties engaged in the business of selling and distributing cooking utensils in commerce between and among the various States of the United States.

PAR. 4. The advertising and selling of respondents' cooking utensils are conducted through the medium of agents, representatives, employees, and distributors of respondents by personal solicitation and contact with the general public. The method chiefly employed by said agents, representatives, employees and distributors is the giving of demonstrations of respondents' products before groups of prospective purchasers, at which time various types of advertising literature, including charts, which have been supplied by respondents are exhibited or distributed, accompanied by sales talks, the material for which is and has been supplied by respondents. Said sales talks have to do with the alleged characteristics and effectiveness of respondents' products in the preparation of food and the alleged disadvantages of the products of their competitors, particularly those made of aluminum. The statements made by said agents, representatives, employees, and distributors have the express or implied approval of respondents and the sales made as a result of said demonstrations inure to the benefit of respondents.

PAR. 5. At the demonstrations hereinabove referred to, respondents, through said agents, representatives, employees, and distributors for the purpose of inducing the purchase of their said products in commerce, have made disparaging statements and representations with respect to utensils sold and distributed in commerce by their competitors. Such disparaging statements and representations and the impressions created by them were and are to the effect that the preparation of, the cooking of, or the keeping of food in aluminum utensils causes the formation of serious and dangerous poisons, and that foods so prepared, cooked or kept are detrimental and hazardous to the health of the user.

PAR. 6. Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time it has been found to be a highly satisfactory material for use in cooking utensils. Poisons are not formed from the preparation of, the cooking of, or the keeping of food in aluminum utensils, and foods prepared, cooked

or kept in such utensils are not detrimental or hazardous to the health of the user.

PAR. 7. Respondents, their agents, representatives, employees and distributors have in the manner aforesaid represented, directly or indirectly, that the use of respondents' cooking utensils will promote and insure better health and is necessary to health.

PAR. 8. The use of respondents' cooking utensils will neither promote nor insure better health, is not necessary to health, and is no more conducive to good health than the use of other modern cooking utensils.

PAR. 9. In the same manner, respondents have made, directly and by implication, other representations shown in the following subparagraphs identified as (A) to (L), inclusive. The said representations are false, deceptive and misleading by reason of the true facts which are set forth in subparagraphs (1) through (12), inclusive.

(A) That there is no loss of vitamins and minerals in fresh vegetables and other food when cooked in respondents' utensils by their recommended method, which is the method known as "waterless cooking" and which involves the use of only a small amount of water; but that such vitamins and minerals are partially or completely destroyed when cooked in vessels made of other material, regardless of the method of cooking.

(1) There is some loss of vitamins and minerals from every known method of cooking. Respondents' recommended method of cooking can be employed, and is employed, with the same results in utensils made of materials other than stainless steel. When such method is so employed, there is no difference in loss of vitamins and minerals as between respondents' utensils and such other utensils.

(B) That potatoes cooked in respondents' vessels and by respondents' method are not fattening.

(2) Potatoes are of high caloric value when cooked by any method. The consumption of a greater number of calories than is required for the maintenance of the body is fattening.

(C) That all the food values are retained in food when cooked in respondents' utensils and therefore no odors are given off; that such odors as emanate from food when it is being cooked means that vitamins and minerals are being cooked out of the food.

(3) The production of odors when food is being cooked does not mean losses in food value. The vitamins and minerals in food do not produce odors.

(D) That calcium, sodium, phosphorus, iodine, manganese, iron, chlorine, silicon, sulphur, magnesium, fluorine, potassium, oxygen, nitrogen, hydrogen, and carbon are essential for perfect health, are

grown into food and should be taken into the body, but that most of them are soluble in water and are partially destroyed when food is boiled.

(4) Silicon, one of the elements listed, is not essential for human nutrition and health. The elements listed are not partially destroyed when food is boiled. Although some of them are soluble in water, there is no loss from this cause unless the water in which the food is cooked is discarded.

(E) That most of our ailments can be traced to the lack of the elements listed in (D) above; that they are in the vegetables when you buy them but never get into the stomach because they are destroyed by the method of cooking.

(5) Most ailments are not due to the lack of any element in the diet. These elements in food are not destroyed by any method of cooking.

(F) That when taken into the human system as a part of the food we eat, calcium protects against tuberculosis; sodium is a protection against gallstones, lowered energy and acidity; phosphorous protects against impaired eyesight, nervous disorders and a dull mind; manganese protects against a confused mind and weak tissues; and iodine is a protection against wrinkled skin.

(6) Calcium does not protect against tuberculosis. Sodium is not a protection against gallstones, lowered energy or acidity. Phosphorous does not protect against impaired eyesight, nervous disorders or a dull mind. Manganese does not protect against a confused mind or weak tissues. Iodine is not a protection against wrinkled skin.

(G) That practically all of the iron in properly cooked green vegetables is assimilated and produces far better results for one suffering from anemia than any tonic.

(7) Green vegetables, no matter how cooked, cannot supply sufficient iron to effectively treat an existing case of anemia.

(H) That when taken into the human system as part of the food we eat, chlorine protects the gums against pyorrhea and the body against blood and liver trouble; that silicon is essential as a preventive for decaying teeth and baldness; that sulphur is a protection against poor digestion, blood and skin disease; that magnesium is a natural laxative—protects against stiff muscles and joints; that many persons suffer from a deficiency of magnesium because of the improper preparation of vegetables; that fluorine protects against tuberculosis, weak eyes and bladder trouble; that nitrogen is a preventive against weak tissues; that potassium wards off constipation; that oxygen protects the body against lowered vitality; that hydro-

gen protects against poor circulation, congestion and inflammation and that carbon protects against poor body heat and lack of energy.

(8) Chlorine does not protect the gums against pyorrhea or the body against blood or liver trouble. As stated above, silicon is not essential for human nutrition and health. It does not prevent decaying teeth or baldness. Sulphur is not a protection against poor digestion, blood or skin diseases. The form in which magnesium exists in plants is not a laxative. Magnesium does not protect against stiff joints or muscles. There is no such thing as a deficiency of magnesium caused by improper preparation of vegetables. Fluorine does not protect against tuberculosis, weak eyes or bladder trouble. Nitrogen is not a preventive against weak tissues. Potassium does not ward off constipation. Oxygen does not protect the body against lowered vitality. Hydrogen does not protect against poor circulation, congestion or inflammation. Carbon does not protect against poor body heat or lack of energy.

(I) That "corrective feeding," meaning eating food cooked in respondents' utensils, will help overcome the following conditions and diseases, to wit; decayed teeth, defective vision, diseased tonsils, enlarged arteries, enlarged anterior cervical glands, goiter, defective hearing, heart defects, underweight, overweight, calluses, boils, catarrh, lumbago, jaundice, sour stomach, influenza, heartburn, bad hearing, carbuncles, eczema, poor eyesight, biliousness, neuralgia, rheumatism, diabetes, kidney trouble, constipation, gallstones, nervousness, rifting, bad teeth, pimples, tired feeling, backaches, indigestion, dizziness, weakness, bald head, colds, ulcers, cancer, laryngitis, bronchitis, arthritis, neuritis, appendicitis, tonsillitis, and all other "itises."

(9) Food cooked in respondents' utensils will not be of value in overcoming the above conditions and diseases.

(J) That 90% of all operations can be prevented by means of diet.

(10) No significant percentage of operations may be prevented by diet.

(K) That less food is required to satisfy the appetite when it is cooked by respondents' method than when cooked by other methods which devitalize the food and cause the loss of its nutrient value.

(11) Less food is not required to satisfy the appetite when cooked by respondents' methods than when cooked by other methods. The amount of food needed to satisfy the appetite does not depend on the nutrient value of the food.

(L) That when coffee is made in respondents' coffee maker no tannic acid or caffeine is extracted.

(12) Water will extract tannic acid and caffeine from coffee regardless of the type of utensil used.

PAR. 10. The use by the respondents and by their agents, representatives, employees and distributors of the above-mentioned false, misleading, deceptive, and disparaging statements and representations, disseminated as aforesaid, has had and has now the tendency and capacity to mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' said products. Furthermore, respondents, by supplying said advertising literature and the material for said sales talks, have furnished to their said agents, representatives, employees and distributors the means and instrumentality for deceiving and misleading the purchasing public. As a result of the said acts and practices of respondents, trade has been unfairly diverted to respondents from their competitors, in consequences of which substantial injury has been and is being done by respondents to their competitors in commerce between and among the various States of the United States.

PAR. 11. The methods, acts and practices of respondents, as hereinabove alleged, are all to the 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.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 18, 1955, 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 the Federal Trade Commission Act. After being duly served with said complaint, the respondents appeared by counsel and subsequently entered into an agreement with counsel supporting the complaint, dated May 25, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said agreement for consent order, which has been signed by counsel supporting the complaint, by counsel for respondents and by all the respondents except the respondent Frank W. Ladky, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner, heretofore duly designated by

the Commission, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice.

Respondents, pursuant to the aforesaid agreement, 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 agreement 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 agreement for consent order 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 agreed that the complaint herein may be used in construing the terms of the order provided for in said agreement, and that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The order which has been agreed upon by the parties differs in two respects from the order which was contained in the notice portion of the complaint, in that (1) the name of the respondent Frank W. Ladky has been eliminated therefrom, and (2) there has been a slight modification in paragraph 6 of said order. In connection with the elimination of the respondent Frank W. Ladky from the order, there has been submitted to the hearing examiner an affidavit sworn to and subscribed on June 1, 1955, by the respondent Wesley A. Ryan, President of the corporate respondent, certifying to the fact that the respondent Frank W. Ladky has not been an officer of the corporate respondent since November 16, 1953, and that during the period when he was an officer of the corporation said respondent had no connection with its sales policy. In a memorandum dated June 8, 1955, transmitting to the hearing examiner the agreement for consent order herein and the above-mentioned affidavit of Wesley A. Ryan, counsel supporting complaint has advised the undersigned that he has no objection to a dismissal of the complaint as to the respondent Frank W. Ladky, based on the statements appearing in said affidavit. Counsel supporting the complaint has further advised the hearing examiner in said transmittal memorandum that the change in paragraph 6 of the order by the insertion of the words "usable by the body" following the word "minerals" was made in order to conform said order to the facts.

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This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order and accompanying affidavit of Wesley A. Ryan, and the hearing examiner being satisfied, on the basis of the statements made in said affidavit and in the transmittal memorandum of counsel supporting the complaint, that the aforesaid agreement for consent order provides for an appropriate disposition of this proceeding, the said agreement and accompanying affidavit are hereby accepted and ordered filed by the hearing examiner, who makes the following jurisdictional findings and order:

1. Respondent, American Stainless Kitchen Company Inc., is now and has been at all times mentioned in the complaint, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 161 West Wisconsin Avenue, Milwaukee, Wisconsin. Respondents Wesley A. Ryan and Randall G. Taylor are now and have been at all times mentioned in the complaint officers of the corporate respondent. The address of respondent Wesley A. Ryan is Room 303, 18 West Chelton (Germantown), Philadelphia, Pennsylvania, and the address of respondent Randall G. Taylor is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named in paragraph 1 above. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent American Stainless Kitchen Company, Inc., a corporation, and its officers, and respondents Wesley A. Ryan and Randall G. Taylor, individually and as officers of said corporation, and respondents' agents, representatives, employees and distributors, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of stainless steel or any other product of substantially similar composition, design, construction or purpose, do forthwith cease and desist from representing directly or by implication:

1. That the preparation of, the cooking of, or the keeping of food in aluminum utensils causes the formation of poisons;

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2. That foods prepared in, cooked in, or kept in aluminum utensils are detrimental or hazardous to the health of the user;
3. That the use of respondents' cooking utensils will promote or insure better health or is necessary to health;
4. That there is no loss of vitamins or minerals in food when cooked in respondents' utensils and by the method recommended by respondents; or that when such method of cooking is employed there is any difference in the loss of vitamins or minerals in food cooked in respondents' utensils as compared with food cooked in vessels made of other material;
5. That potatoes cooked by the method advocated by respondents are not fattening;
6. That the production of odors from food while it is being cooked indicates a loss of vitamins, minerals usable by the body or food values;
7. That silicon is essential for human nutrition or health;
8. That calcium, sodium, phosphorus, iodine, manganese, iron, chlorine, silicon, sulphur, magnesium, fluorine, potassium, oxygen, nitrogen, hydrogen or carbon in food are partially destroyed by boiling or any other method of cooking;
9. That most ailments are due to the lack of some element in the diet;
10. That when taken into the human system as a part of the food we eat:
 - (a) calcium protects against tuberculosis;
 - (b) sodium is a protection against gallstones, lowered energy or acidity;
 - (c) phosphorus protects against impaired eyesight, nervous disorders or a dull mind;
 - (d) manganese protects against a confused mind or weak tissues;
 - (e) iodine is a protection against wrinkled skin;
 - (f) chlorine protects the gums against pyorrhea or the body against blood or liver trouble;
 - (g) silicon is essential as a preventive for decaying teeth or baldness;
 - (h) sulphur is a protection against poor digestion, blood or skin diseases;
 - (i) magnesium in vegetables is a natural laxative, or protects against stiff joints or stiff muscles;
 - (j) fluorine protects against tuberculosis, weak eyes or bladder trouble;
 - (k) nitrogen is a preventive against weak tissue;
 - (l) potassium wards off constipation;

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- (m) oxygen protects the body against lowered vitality;
- (n) hydrogen protects against poor circulation or congestion or inflammation;
- (o) carbon protects against poor body heat or lack of energy; or that
- (p) any of these elements or any other elements are of greater value to the body than they actually are;

11. That green vegetables, no matter how cooked, can supply sufficient iron to effectively treat an existing case of anemia;

12. That a deficiency of magnesium in the body can be caused by the improper preparation of vegetables;

13. That eating food cooked in respondents' utensils will help overcome decayed teeth, defective vision, diseased tonsils, enlarged arteries, enlarged anterior cervical glands, goiter, defective hearing, heart defects, overweight, underweight, calluses, boils, catarrh, lumbago, jaundice, sour stomach, influenza, heartburn, bad hearing, carbuncles, eczema, poor eyesight, biliousness, neuralgia, rheumatism, diabetes, kidney trouble, constipation, gallstones, nervousness, rifting, bad teeth, pimples, tired feeling, backache, indigestion, dizziness, weakness, baldness, colds, ulcers, cancer, laryngitis, bronchitis, arthritis, neuritis, appendicitis or tonsillitis;

14. That any significant percentage of surgical operations may be prevented by diet;

15. That less food is required to satisfy the appetite when it is cooked by respondents' methods than when cooked by other methods, or that the amount of food needed to satisfy the appetite depends on the nutrient value of the food;

16. That when coffee is made in respondents' coffee maker no tannic acid or caffeine is extracted.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Frank W. Ladky.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3rd day of August, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents American Stainless Kitchen Company, Inc., a corporation, and Wesley A. Ryan and Randall G. Taylor, individually and as officers 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 the order to cease and desist.

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IN THE MATTER OF
AARON WOOL CORPORATION ET AL.

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

Docket 6333. Complaint, Apr. 20, 1955—Decision, Aug. 11, 1955

Consent order requiring manufacturers in Yonkers, N. Y., to cease violating the Wool Products Labeling Act by describing as "All Wool," "100% Wool", etc., on tags or labels and in sales invoices and shipping memoranda, batts or battings which contained substantial quantities of non-woolen materials, and to cease failing to identify the manufacturer on labels as required by the Act.

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

Mr. Roslyn D. Young, Jr. and *Mr. George E. Steinmetz* for the Commission.

Mr. Myron Goldman, of New York City, 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 Aaron Wool Corporation, a corporation; and Jack Markowitz, Oscar Fishman, and Murry Lipman, individually and as officers 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, Aaron Wool Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located at 144 Nepperhan Avenue, Yonkers, New York.

The individual respondent, Jack Markowitz, Oscar Fishman and Murry Lipman are President, Treasurer and Secretary respectively, of the corporate respondent, Aaron Wool Corporation. Said individuals formulate, direct and control the acts, policies and practices of said corporate respondent. Said individual respondents have, and maintain, their business offices at the same address as corporate respondent.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since January, 1953, 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 by respondents 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 wool products were batts or battings labeled or tagged by respondents as consisting of "100% Wool"; "100% Reprocessed Wool"; and "80% Reprocessed Wool, 20% other Fibers"; whereas in truth and in fact said batts or battings were not composed of 100% wool; 100% reprocessed wool; or 80% reprocessed wool, 20% other fibers, as represented by said respondents.

PAR. 4. Said wool products described as batts or battings were further misbranded by respondents within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively described and identified in sales invoices and shipping memoranda applicable thereto as "All Wool"; "100% Reprocessed Wool"; and as "80% Reprocessed Wool, 20% Other Fibers"; whereas in truth and in fact said batts or battings were not composed of all wool; 100% reprocessed wool, or 80% reprocessed wool, 20% other fibers, as represented by said respondents.

PAR. 5. Said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

Among such wool products were batts or battings misbranded by said respondents in that they were not stamped, tagged or labeled so as to disclose the name or the registered identification number of the manufacturer thereof, or of one or more persons subject to Section 3 of said Act with respect to said wool products.

PAR. 6. The acts and practices of respondents, as set forth in Paragraphs Two, Three, Four and Five hereof, constitute misbranding of wool products and were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated

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thereunder and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. In the course and conduct of their business as aforesaid, and and for the purpose of inducing the purchase of said wool products described herein as batts or batting, by the manufacturers of garments and other wool products for resale to retailers and distributors in commerce, respondents have made various statements concerning their products in sales invoices and shipping memoranda applicable thereto. Among and typical, but not all inclusive, of such statements are the following:

ALL WOOL

100% REPROCESSED WOOL

80% REPROCESSED WOOL, 20% OTHER FIBERS

PAR. 8. Through the use of such statements and representations to describe said wool batts and battings, respondents represented, directly and by implication, that said products were composed of all wool: 100% reprocessed wool; and 80% reprocessed wool, 20% other fibers.

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive, since, in truth and in fact, respondents' products described as batts or battings and represented as "All Wool" were not composed of all wool but contained substantial quantities of non-woolen fibers. The said products represented as "100% Reprocessed Wool" were not composed of 100% reprocessed wool, but contained substantial quantities of non-woolen fibers. The said products represented as "80% Reprocessed Wool, 20% Other Fibers" were composed of substantially less than 80% reprocessed wool and substantially more than 20% other fibers.

PAR. 10. Respondents, in the course and conduct of their business are and were in competition with other corporations and with firms and individuals likewise engaged in the sale of batts or battings, in commerce.

PAR. 11. The use by respondents of statements herein set forth, in the course of selling and offering for sale their products in commerce as above described, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were and are true, and to induce the purchase of such products on account of such beliefs induced as aforesaid. As a result thereof substantial trade in commerce has been diverted to respondents from their competitors, and substantial injury has thereby been done to competition in commerce.

PAR. 12. The acts and practices of the respondents as set forth in Paragraphs Seven, Eight, Nine, and Ten herein were all to the prejudice and injury of the public and of respondents' competitors 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.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charged the respondents Aaron Wool Corporation, a New York corporation located at 144 Nepperhan Avenue, Yonkers, New York, and Jack Markowitz, Oscar Fishman, and Murry Lipman, individually and as officers of said corporation, with the use of unfair and deceptive acts and practices and unfair methods of competition in interstate commerce in violation of the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Rules and Regulations made pursuant thereto, by misbranding certain wool products manufactured by them for introduction into commerce.

Subsequent to the filing of their answers, the respondents Oscar Fishman and Murry Lipman filed their separate affidavits supported by an affidavit of respondent Jack Markowitz, President of said corporate respondent, to the effect that respondents Oscar Fishman and Murry Lipman never have been officers or directors of respondent corporation and never did, and do not, direct, formulate or control the acts and practices of the corporate respondent, but instead, respondent Oscar Fishman is, and has been, actively engaged in the Yonkers Fiber Corp., located at 128 Saw Mill Road, Yonkers, New York, and respondent Murry Lipman is, and has been, actively engaged in the Metropolitan Thread Company located at 96 Fifth Avenue, New York, New York.

After the issuance of said complaint and the filing of their answers thereto, the respondents Aaron Wool Corporation and Jack Markowitz individually, entered into an agreement for consent order with counsel in support of the complaint disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement 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 agreement, the said respondents admitted all the jurisdictional allegations of the complaint and agreed that the

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record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement, the answers heretofore filed by respondents were withdrawn and the parties expressly waived 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 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 agreement, respondents further agreed that the order to cease and desist, issued in accordance with said agreement, 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 agreement, 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 agreement, 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 agreement and the order therein contained, and it appearing that said agreement 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 agreement, 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 respondents Aaron Wool Corporation, a corporation, and its officers, and Jack Markowitz, individually and as an officer 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 batts and battings or other "wool products," as such product 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 product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages 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 delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, and

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 Aaron Wool Corporation, a corporation, and its officers, and Jack Markowitz, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of batts or battings or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof, in sales invoices, shipping memoranda or in any other manner.

It is further ordered, That the complaint be dismissed as to the respondents Oscar Fishman and Murry Lipman.

Order

52 F. T. C.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 11th day of August, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Aaron Wool Corporation, a corporation, and Jack Markowitz, individually and 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 the order to cease and desist.

Complaint

IN THE MATTER OF
SPURGEON PICKERING DOING BUSINESS AS
NATIONAL NURSERIES

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

Docket 6343. Complaint, May 5, 1955—Decision, Aug. 11, 1955

Consent order requiring a seller in Biloxi, Miss., to cease misrepresenting in advertising the quality, condition, etc., of azaleas, camellia plants, rose bushes, and other nursery stock, and shipping to purchasers small unrooted dried cuttings which would not grow when planted.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr. for the Commission.

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 Spurgeon Pickering, an individual trading and doing business as National Nurseries, hereinafter referred to as respondent, has 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 Spurgeon Pickering is an individual trading and doing business as National Nurseries, with his office and principal place of business located at Briarfield Avenue and Railroad in the City of Biloxi, Mississippi.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of nursery stock in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said nursery stock, when sold to be shipped and transported from his place of business in the State of Mississippi to purchasers thereof at their respective points of location in the various States of the United States other than Mississippi and in the District of Columbia.

There is now, and has been for more than one year last past, a course of trade by respondent in said nursery stock in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of his said nursery stock, respondent