

Complaint

IN THE MATTER OF

MACKVINE CORPORATION ET AL.

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

Docket 6332. Complaint, Apr. 20, 1955—Decision, Sept. 17, 1955

Consent order requiring manufacturers in New Haven, Conn., to cease violating the Wool Products Labeling Act through misrepresenting the constituent fibers of certain batts and battings on labels and sales invoices.

Before *Mr. John Lewis*, hearing examiner.

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

Spiro & Levine, of Danbury, Conn., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and 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 Mackvine Corporation, a corporation; and Edward Levine, David Levine, and Bernard E. Levine, 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, Mackvine Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located at 54 Eddy Street, New Haven, Connecticut.

The individual respondents, Edward Levine, David Levine and Bernard E. Levine are President, Treasurer and Secretary, respectively, of the corporate respondent, Mackvine Corporation. Said individuals formulate, direct and control the acts, policies and practices of said corporate respondent. Said individual respondents have 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, 1954, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and

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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 wool products were batts or battings labeled or tagged by respondents as consisting of "70% Wool, 30% Other Fibers," whereas, in truth and in fact, said products were not composed of 70% wool, 30% other fibers, as tagged or labeled by said respondents.

PAR. 4. Said wool products described as batts or battings were further 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 described and identified in sales invoices and shipping memoranda applicable thereto as "70% Reprocessed Wool, 30% Man Made Fibers"; whereas in truth and in fact, said products contained substantially less than 70% reprocessed wool and substantially more than 30% non-woolen fibers.

PAR. 5. Certain of said wool products were further misbranded within the intent and meaning 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 which were misbranded 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 2, 3, 4 and 5 hereof, constituted misbranding of wool products and were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated 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 for the purpose of inducing the purchase of said wool products described herein as batts or battings, 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:

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70/30 Batting
70% Reprocessed Wool
30% Man Made Fibers

PAR. 8. Through the use of such statements and representations to describe said wool batts and batting, respondents represented, directly and by implication, that said products were composed of 70% reprocessed wool, 30% other non-woolen fibers.

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive, since, in truth and in fact, respondents' said products described as batts or battings were not composed of 70% reprocessed wool, 30% man made fibers, but were composed of substantially less than 70% reprocessed wool and substantially more than 30% 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 unfairly 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 7, 8, 9, 10 and 11 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 JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 20, 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 by counsel and filed their answer thereto. Thereafter this proceeding came on for hearing before the undersigned, thereto-

fore duly designated to act as hearing examiner in said proceeding, on June 16, 1955, in New York, New York. After the opening of said hearing, but before the taking of testimony, counsel requested an adjournment of the hearing on the ground that substantial agreement had been reached on the terms of a consent settlement of the proceeding. Said request was accordingly granted. Prior to the adjourned date of said hearing, the undersigned was advised that an agreement for consent order had been signed, and an order was therefore issued by the hearing examiner cancelling further hearings. Thereafter there was submitted to the hearing examiner, in accordance with Section 3.25 of the Commission's Rules of Practice, an agreement for consent order dated June 27, 1955, signed by counsel supporting the complaint, counsel for respondents, and the respondents Mackvine Corporation and Bernard E. Levine, and approved by the Director of the Commission's Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have agreed to the withdrawal of their answer and 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 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 is the same as the order proposed in the notice portion of the complaint, except for the elimination therefrom of respondents Edward Levine and David Levine. In connection with the elimination of said respondents from the order, there has been submitted to the hearing examiner three (3) affidavits, each signed by one of the individual respondents, attesting to the fact that the respondents Edward Levine and David Levine are minority stockholders of the corporate respondent, do not formulate, direct and control its acts, practices and policies, and do not have their business address at the same address as said respondents. By memorandum

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dated June 30, 1955, transmitting the agreement for consent order and the aforesaid affidavits, counsel supporting the complaint have advised the hearing examiner that, based on the facts stated in the aforesaid affidavits, they recommend dismissal of this proceeding as to the two respondents not included in the order, and further that the agreement for consent order was entered into on the understanding and agreement between counsel that it was conditioned upon a dismissal of the proceeding as to said respondents.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement for consent order and accompanying affidavits, the answer previously filed by respondents being hereby deemed withdrawn, and the hearing examiner being satisfied, on the basis of the statements made in said affidavits and 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 affidavits are hereby accepted and are ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner makes the following jurisdictional findings and order:

1. The respondent corporation, Mackvine Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business located at 54 Eddy Street, New Haven, Connecticut. Respondent Bernard E. Levine is now and has been at all times mentioned herein, Secretary of said corporate respondent, Mackvine Corporation. Said individual respondent has his business office at the same address as corporate respondent.

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 Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, 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

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batts and battings or other "wool products," as such products are defined in and subject to said Wool Products Labeling Act 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 contained therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total 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 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 respondents Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, 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 wool 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 wool products are composed, or the percentages or amounts thereof in sales invoices, shipping memoranda or in any other manner.

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It is further ordered, That the complaint be, and the same hereby is, dismissed without prejudice as to the respondents Edward Levine and David Levine.

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 17th day of September 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Mackvine Corporation, a corporation, and its officers, and Bernard E. Levine, 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.

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IN THE MATTER OF

EDWARD McSWIGGAN DOING BUSINESS AS UNIVERSAL
TRAINING SERVICECONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6845. Complaint, May 5, 1955—Decision, Sept. 17, 1955*

Consent order requiring seller of a correspondence course in Miami, Fla., to cease representing falsely that his "Universal Training Service" was sponsored by the Government or was a branch of the Civil Service Commission, that his course must be taken for a civil service job, which one might obtain near home, that persons in U. S. Civil Service jobs were exempt from military service, etc.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Morton Nesmith for the Commission.

Smith, Risting & Smith, of Washington, D. C., for respondent.

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 Edward McSwiggan, trading as Universal Training Service, 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 Edward McSwiggan is an individual trading and doing business as Universal Training Service with his office and principal place of business located at 1872 N. W., 7th Street, Miami 52, Florida.

Said respondent is now and has been for more than two years last past engaged in the sale and distribution of a course of study and instruction intended for preparing students thereof for examination for certain civil service positions in the United States Government which said course is pursued by correspondence through the United States mails. Respondent, in the course and conduct of said business, causes said course to be transported from his said place of business in the State of Florida, to, into and through States of the United States other than Florida to purchasers thereof located in such other States. Prior to establishing his principal office and place of business