

Complaint

52 F. T. C.

IN THE MATTER OF

L. & I. FISHKIN, INC., ET AL.

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

Docket 6378. Complaint, June 28, 1955—Decision, Nov. 5, 1955

Consent order requiring respondents to cease labeling interlinings of children's coats and jackets falsely as "100% Wool," failing to label certain garments, and furnishing false guarantees that such products were not misbranded, all in violation of the Wool Products Labeling Act.

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

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

Mr. George M. Burgh, 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 L. & I. Fishkin, Inc., a corporation, and Louis Fishkin individually and as an officer of said corporation and Irving Fishkin, individually, 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, starting its charges in that respect as follows:

PARAGRAPH 1. Respondent, L. & I. Fishkin, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York. Said corporation trades and does business under the name of Vogue Sportswear Company. Respondent Louis Fishkin is president and respondent Irving Fishkin is general manager of said corporation and these individuals formulate, direct and control the acts, policies and practices of said corporate respondent. The offices and principal place of business of said respondents are located at 112 West 34th Street, New York, N. Y.

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 ship-

ment 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 constituent fibers contained therein.

Among such misbranded wool products were children's coats and jackets, the interlining of which was labeled or tagged by respondents as consisting of "100% Wool"; whereas in truth and in fact said interlining was not composed of 100% wool as said term is defined by the Wool Products Labeling Act of 1939.

PAR. 4. Certain of said wool products described as children's coats and jackets 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. The respondents falsely guaranteed that wool products manufactured by them were not misbranded, when they had reason to believe that said wool products falsely guaranteed would be introduced, sold, transported and distributed in commerce.

PAR. 6. The respondents were, at all times mentioned herein, in competition, in commerce, with other individuals and with firms and corporations likewise engaged in the sale of children's coats and jackets.

PAR. 7. The acts and practices of respondents, as herein alleged, constitute misbranding of wool products and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder; and all of the aforesaid acts and practices as alleged herein, 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.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 28, 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 and before an answer was received, respondents L. & I. Fishkin, Inc., and Louis Fishkin

entered into an agreement with counsel supporting the complaint, dated August 11, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding. Said agreement has been approved by the Director of the Bureau of Litigation and has been submitted to the above-named hearing examiner, heretofore duly designated, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Accompanying the agreement is an affidavit filed by respondent Irving Fishkin, supported by a separate affidavit of respondent Louis Fishkin, president of respondent corporation, to the effect that respondent Irving Fishkin is neither general manager, officer, stockholder, nor director of respondent corporation; that he is an employee in the corporation and had no knowledge whatever, nor was he in any way concerned with matters related in the complaint in this proceeding.

Respondent L. & I. Fishkin, Inc., and Louis Fishkin, 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 findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement also provides that respondent Irving Fishkin be dismissed from this proceeding for the reasons set forth in the affidavits, and that the agreement disposes of all of the proceeding as to all parties. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It was further agreed that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement; that the 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 agreement also provided that the following order may be entered in this proceeding by the Commission without further notice to respondents; that when so entered it shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an

432

Order

appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 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, L. & I. Fishkin, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 112 West 34th Street, New York, New York. Respondent Louis Fishkin is president of respondent corporation L. & I. Fishkin, Inc., and 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, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

ORDER

It is ordered, That the respondent L. & I. Fishkin, Inc., a corporation, and respondent Louis Fishkin, 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 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 children's coats and jackets 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,

Decision

52 F. T. C.

(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 products, of any non-fibrous loading, filling or adulterating matter;

(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; and

3. Furnishing false guaranties when there is reason to believe the wool products so guaranteed may be introduced, sold, transported or distributed in commerce.

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 complaint be, and the same hereby is, dismissed without prejudice as to the respondent Irving Fishkin, individually.

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 5th day of November, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents L. & I. Fishkin, Inc., a corporation, and Louis Fishkin, 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.

Decision

IN THE MATTER OF
GARY SALES COMPANY, INC., ET AL.

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

Docket 6272. Complaint, Dec. 22, 1954—Decision, Nov. 8, 1955

Order requiring a distributor in New York City of Jewelry, novelties, household articles, cooking utensils, silverware, etc., to cease furnishing to members of the public and other salesmen sales circulars containing pull cards for the sale of the merchandise to purchasers by means of a game of chance, gift enterprise, or lottery scheme.

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

Mr. Leo Kotler and *Mr. Herbert Shiff*, of New York City, for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 22, 1954, the Federal Trade Commission issued its complaint against Gary Sales Company, Inc., a corporation, and Sam Frank, Norman Eisner, Henry Davis, and Eli Tockar, individually and as officers of said corporation, charging them with selling and distributing jewelry, novelties, household articles and other merchandise in commerce by means of a game of chance, gift enterprise or lottery scheme, contrary to the established public policy of the United States and in violation of the provisions of the Federal Trade Commission Act.

Respondents, in their answer to the complaint, denied that their method of distributing merchandise in commerce constitutes a game of chance, gift enterprise or lottery scheme. At the conclusion of the presentation of the case-in-chief in support of the complaint, Respondents moved that the complaint herein be dismissed for want of proof. The disposition of this motion was deferred until the issuance of the initial decision herein.

The evidence presented at the hearing in this proceeding warrants the following factual findings and conclusions:

1. Gary Sales Company, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 100 Fifth Avenue, in the city of New York, State of New York. Respondents Sam Frank, Norman Eisner, Henry Davis and Eli Tockar are individuals and officers of corporate respondent Gary Sales Company,