

Decision

IN THE MATTER OF
ELLIOT KNITWEAR, INC. ET AL.

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

Docket 6637. Complaint, Sept. 17, 1956—Decision, June 25, 1957

Consent order requiring two associated corporations, their common president, and the business in which he was a copartner, with common office in New York City, to cease violating the Wool Products Labeling Act by tagging wool products deceptively with respect to their constituent fibers, labeling as "Pure Cashmere", sweaters which contained a substantial quantity of fiber other than cashmere, failing to identify the manufacturer, and failing in other respects to conform to the requirements of the Act.

The charge of the complaint alleging misleading use of the word "Cashmora" on labels of certain products remains pending.

Mr. S. F. House supporting the complaint.

Goldstein, Golenbock & Barell, of New York, N. Y., for respondents.

INITIAL DECISION BY JOHN LEWIS
DISPOSING OF PORTION OF PROCEEDING

The Federal Trade Commission issued its complaint against the above-named respondents on September 17, 1956, 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 served with said complaint, respondents appeared by counsel and subsequently entered into an agreement containing a consent order to cease and desist, dated April 15, 1957, purporting to dispose of all of this proceeding as to all parties, except as to the use of the word "Cashmora" on tags, stamps or labels attached to certain of respondents' products as alleged in Paragraph Five of the complaint. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agree-

ment further provides that, with respect to that part of the proceeding therein disposed of, respondents waive 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 has also been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has been further agreed that the aforesaid 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 portion of this proceeding which is the subject of the aforementioned agreement containing consent order having now come on for final consideration on the complaint and the said agreement, and it appearing that, with respect to the issues covered by said agreement, the order therein contained provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner accordingly, makes the following jurisdictional findings and order:

1. Respondents Elliot Knitwear, Inc., and Elliot Import Corporation, are corporations existing and doing business under and by virtue of the laws of the State of New York. Respondent Herman Gross, an individual, is president of both corporations and formulates, directs and controls the acts, policies and practices of said corporations. Respondents Herman Gross and Samuel I. Gross are individuals and copartners doing business as Elliot Glove Company. All of the respondents have their office and principal place of business located at 105 Madison Avenue, in the City of New York, State of New York.

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 Elliot Knitwear, Inc., and Elliot Import Corporation, both corporations, and their officers, and

Herman Gross, individually and as an officer of said corporations, and Herman Gross and Samuel I. Gross, individually and as co-partners trading and doing business under the firm name of Elliot Glove Company, or under any other name, and respondents' respective agents, representatives, 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such wool products as to the character or amount of the constituent fibers contained therein;

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

- (a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, (5) the aggregate of all other fibers;

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

- (c) The name or 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.

3. Failing to use the common generic name when naming fibers in the required information.

4. Using the name of any person, other than the manufacturer of the product on the stamp, tag, label or other mark of identification affixed to such product unless accompanied by appropriate words showing that the product was not manufactured by such person.

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 25th day

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of June 1957, become the decision of the Commission; and, accordingly:

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.

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IN THE MATTER OF

LAKELAND-DEERING NURSERIES SALES ET AL.

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

Docket 6666. Complaint, Oct. 26, 1956—Decision, June 25, 1957

Consent order requiring mail order sellers of nursery products in New York City to cease making false representations in newspaper advertisements, circulars, etc., regarding the physical characteristics, color, season and amount of bloom, etc., of their "Lythrum Morden Gleam" and Shasta Daisy plants.

Mr. Donald K. King and Mr. S. F. House for the Commission.
Zalk, Hayashi & Karp, by Mr. Joseph Zalk, of New York, N. Y.,
for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 26, 1956, issued and subsequently served its complaint in this proceeding against respondents Lakeland-Deering Nurseries Sales, a corporation existing and doing business under and by virtue of the laws of the State of New York, Henry L. Hoffman, Chester Carity, Lillian Zogheb and Allen Lekus, individually and as president, vice president, secretary, and treasurer, respectively, of the corporate respondent. The office and principal place of business of said respondents is at 16 West 61st Street, New York, New York.

Subsequently, a considerable amount of proof was taken both in support of and in defense to allegations of the complaint. Before completion thereof attorneys, on May 14, 1957, entered into an agreement providing for the entry of a consent order by the terms of which respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be