

Decision

IN THE MATTER OF
MARTIN BERDY

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

Docket 6950. Complaint, Nov. 20, 1957—Decision, May 30, 1958

Order requiring an individual in New York City to cease violating the Wool Products Labeling Act by tagging as "wool," interlining materials which contained substantial amounts of nonwoolen fibers, and failing to label such products as required by the Act.

Mr. Daniel T. Coughlin for the Commission.

No appearances for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondent Martin Berdy, an individual, has violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, together with the rules and regulations promulgated under said latter act, by falsely and deceptively stamping, tagging, and labeling certain wool products with respect to the character and amount of the constituent fibers therein; by misbranding such products; and by otherwise misrepresenting such products as 100 percent wool or 100 percent reprocessed wool. The complaint was filed November 20, 1957, and was lawfully served thereafter upon respondent who failed to answer said complaint or otherwise appear herein.

Upon proper order served upon said respondent, initial hearing was held in New York, N.Y., whereat Commission counsel appeared but respondent did not appear. The respondent's default of answer and of other appearance prior to or at the hearing was taken and entered of record by the hearing examiner. Commission's counsel presented evidence in support of his case-in-chief and rested. Such evidence, in substance, consisted of statements and exhibits, the latter including affidavits, certificates, and other documentary evidence as well as certain physical exhibits identified as samples correctly taken from the wool products so misrepresented, mislabeled and sold in commerce. The record contains evidence that the respondent, after being fully advised that his products and transmission and sale thereof in commerce were violative of the acts herein involved, nevertheless knowingly and willfully proceeded to sell considerable quanti-

ties of said products in commerce on the basis stated to a representative of the Commission by him, in substance, that he needed the money.

The hearing examiner thereupon closed the proceeding for the taking of evidence and requested Commission's counsel to submit proposed findings, conclusion and order, which were duly filed February 21, 1958.

Upon due and impartial consideration of the whole record, it is found that the material allegations of the complaint are each and all sustained by the evidence, the hearing examiner specifically finding the facts to be as follows:

Respondent is an individual sometimes trading under the name of Rodney Mills, Inc., and the Modern Rug Co., Inc., located at 95 Rodney French Boulevard, New Bedford, Mass. The principal place of business of the respondent is located at 470 Fourth Avenue, New York, N.Y.

Subsequent to the effective date of the Wool Products Labeling Act of 1939, and the rules and regulations thereunder, respondent 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.

Certain of said wool products were misbranded by respondent within the intent and meaning of section 4(a)(1) of the Wool Products Labeling Act and the rules and regulations thereunder, in that said products were falsely and deceptively stamped, tagged and labeled with respect to the character and amount of the constituent fibers therein. Among such misbranded products were woven interlining materials labeled and tagged "wool," whereas, in truth and in fact, said material contained substantial amounts of nonwoolen fibers.

The wool products of respondent were further misbranded within the intent and meaning of the Wool Products Labeling Act, and the rules and regulations thereunder, in that they were not stamped, tagged, or labeled as required under the provisions of section 4(a)(2) of said act.

Respondent in the conduct of his business is in competition, in commerce, with other individuals and with firms and individuals likewise engaged in the sale of interlining materials.

Respondent in the course and conduct of his business, as aforesaid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, has misrepresented the fiber content of certain of said wool products, in that they have falsely and deceptively described and indentified in sales invoices and shipping memoranda applicable thereto as "100 percent wool" or "100 percent reprocessed wool,"

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whereas, in truth and in fact, said wool products contained substantially less than 100 percent wool or 100 percent reprocessed wool.

The said acts and practices of respondent have had, and now have, the tendency and capacity to mislead and deceive the purchasers of said wool products as to the true fiber content thereof and cause them to misbrand products manufactured by them in which said materials were used.

CONCLUSIONS OF LAW

There being jurisdiction of the person of respondent upon the foregoing findings of fact, the hearing examiner makes the following conclusions of law:

1. The acts and practices of respondent constituted misbranding of wool products and were, and are, in violation of the Wool Products Labeling Act, and the rules and regulations thereunder, and constituted, and now 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.

2. The Federal Trade Commission has jurisdiction over all of said respondent's acts and practices which have been hereinabove found to be false, misleading, and deceptive.

3. The public interest in the proceeding is clear, specific, and substantial.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondent Martin Berdy, his agents, representatives and employees, directly or through any corporate or other device, in connection with the 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 woven interlining materials or other "wool products" as such products are defined and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or are in any way 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 product exclusive of ornamentation not exceeding five percentum of said total 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 nonfibrous 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.

It is further ordered, That respondent Martin Berdy, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of woven interlining materials, 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 thereof, on invoices or other shipping memoranda or in any other manner.

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 30th day of May 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Martin Berdy, an individual, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF

NORTH AMERICAN NUT CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 7050. Complaint, Jan. 27, 1958—Decision, May 31, 1958*

Consent order requiring distributors in New York City of vending machines and vending machine supplies, to cease representing falsely in advertising in newspapers, periodicals, letters, etc., and through promotional material furnished their salesmen and agents, that they offered employment to selected persons who would operate their vending machines and must have working capital for the purchase of merchandise to be dispensed therefrom, that such investment was secured and without risk and would earn excessive profits, that they would provide supervisory and financial assistance, and that they were representatives of a large New York company.

Mr. Terral A. Jordan for the Commission.

Mr. Jac M. Wolff, of New York, N.Y., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued January 27, 1958, charges the respondents North American Nut Co., Inc., a corporation, Nut-O-Matic Co., Inc., a corporation, and Martin Richmond and George Weinstein, individually and as officers of said corporations, the office and principal place of business of all respondents being located at 27 William Street, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act in the advertising, selling and distributing of vending machines and vending machine supplies.

After the issuance of the complaint, said respondents entered into an agreement containing consent order to cease and desist 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 said 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 facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of