

Decision

IN THE MATTER OF
ETTINGER MANUFACTURING COMPANY ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6806. Complaint, May 20, 1957—Decision, Sept. 23, 1958*

Order requiring manufacturers in Chicago to cease labeling as "All wool filled," bed comforters the filling of which contained a substantial amount of fibers other than wool and when the only batting they purchased from their sources of supply was either "reprocessed wool" or "Wool Shoddy felt"; and to cease representing falsely by means of advertising streamers, flyers, and inserts enclosed in the individual containers as well as by other advertising circulated to the retail trade, that their products had been moth-proofed and bacteria-proofed, that certain of them had been manufactured by Pepperell Manufacturing Co., that the filling in some was composed of all wool, and that the amount of \$24.95 or other specified price was the usual retail price.

Mr. William A. Somers, for the Commission.

Mr. Lawrence A. Jacobson, of Chicago, Ill., for himself and other respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN,
HEARING EXAMINER

This proceeding involves charges that respondents have, in numerous particulars, violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations of the Commission promulgated thereunder by manufacturing and selling in commerce certain wool products which were misbranded. This initial decision finds generally that the allegations of the complaint are amply sustained upon the whole record by a preponderance of the reliable, probative and substantial evidence as required by §7(c) of the Administrative Procedure Act and the Commission's Rules of Practice for Adjudicative Proceedings adopted pursuant thereto and that respondents have violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder as alleged in the complaint. A cease and desist order is issued herein appropriate to the findings and conclusions which are hereinafter set forth.

This case was instituted by the filing of a complaint on May 20, 1957, regular service of which was duly had on each of the

several respondents. On June 19, 1957, respondent, Ettinger Manufacturing Company, a corporation, filed its answer but the case was tried on the theory that said answer also constituted the answer of the several individual respondents although neither of them formally answered the complaint. The initial hearing was held on July 24, 1957, in Chicago, Illinois, whereat the individual respondents appeared in person and on behalf of the respondent corporation, and at which evidence was adduced in support of the Commission's case in chief. Thereafter, on December 2, 1957, respondents filed their petition to dismiss, supported by affidavits, which petition was opposed on December 6, 1957, by an answer wherein counsel supporting the complaint prayed denial of said petition to dismiss. Said petition to dismiss having been filed before the completion of the Commission's case in chief, the same was denied on May 13, 1958. Meanwhile, further hearings were held on the Commission's case in chief in Dayton, Ohio, on May 8, 1958, and in Washington, D.C., on May 9 and 12, 1958, at which time counsel supporting the complaint rested. Respondents did not appear at these latter hearings although duly notified thereof nor did they elect to present evidence on their own behalf as ordered by the hearing examiner on May 13, 1958. On July 22, 1958, counsel supporting the complaint filed his proposed findings, conclusions and order pursuant to authority granted by the hearing examiner, but the respondents failed to file any although also authorized to do so.

The hearing examiner heard and observed all the witnesses. Their conduct and demeanor while testifying, together with all of the evidence presented on the record including a number of respondents' advertising streamers, flyers, inserts and comforters, and all admissions in the answer have been fully and fairly considered. This evidence and all fair and reasonable inferences arising therefrom, together with all statements, arguments, and proposals of counsel, have been fully evaluated and weighed. Therefore, upon the whole record, it is found that the material allegations of the complaint are each and all fully and fairly established as to all of the respondents. The proposed findings, conclusions and order of counsel supporting the complaint have been adopted, and the hearing examiner specifically finds as follows:

Respondent Ettinger Manufacturing Company is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Illinois. Respondents Homer V. Lundeborg and Lawrence A. Jacobson are president and treasurer, respectively, of said corporate respondent and formulate, direct and control the acts, policies and practices of the said corporate respondent. Said respondents' offices and place of business is located at 1319 South Michigan Avenue, Chicago, Ill. The answer admits most of these facts although denying that respondent Jacobson was an officer of corporate respondent. The evidence establishes, however, that respondent Jacobson, together with an associate, owns two-thirds of the stock of the corporate respondent and has held the office of treasurer for some years past as well as being its attorney. Although by an affidavit filed in support of his motion he denies that he had anything to do with the advertising or labeling of respondent corporation's product, there is no evidence of record upon which adjudication of such fact can be made, respondents apparently having abandoned further defense as hereinbefore stated. It is now basic that corporate officers who direct, control and formulate the acts and practices of a corporate respondent as established herein are proper parties respondent, and the order hereinafter issued, therefore, includes them.

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 in commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, wool products, as "wool products" are defined therein. These facts are all admitted in the answer as well as established by the evidence.

Certain of respondents' wool products were falsely and deceptively labeled or tagged with respect to the character and amounts of the constituent fibers in batting or filling contained therein contrary to the intent and meaning of §4(a)(1) of the Wool Products Labeling Act of 1939. Among respondents' misbranded wool products were bed comforters labeled or tagged as "All wool filled," whereas in truth and in fact the filling of such bed comforters did not consist of all wool but contained a substantial amount of fibers other than wool. The respondents did not use virgin wool as the term "wool" is defined in §2(b) of the Wool Products Labeling Act, but to the contrary the only batting which they purchased from their sources of supply was either "re-processed wool" or "Wool Shoddy felt."

Certain of respondents' wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of §4(a) (2) of the said Wool Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act. The permanent labels attached to the comforters received in evidence and the testimony of Frank J. Feeny, a chemist who tested the comforter products of respondent in evidence, clearly established that the "wool batting" of the several exhibits only, in substance, tested out as being from about 67 percent to 94.2 percent wool, the rest being acetate, rayon, or cotton residue with traces of nylon and rayon, or other unidentified residues other than wool.

In the course and conduct of their business in commerce, and for the purpose of inducing the purchase of their comforters, the respondents have enclosed in the individual containers therewith advertising streamers, flyers and inserts in the words and figures as alleged and set out in the complaint issued herein, along with many other similar advertising streamers, flyers and inserts, and have circulated other advertisements containing various statements and representations to the retail trade for the purpose of inducing the purchase of their products. Respondents do not by the answer deny the allegations of paragraph 6 therefore deemed admitted, but the record is complete with exhibits and testimony showing the foregoing facts. The respondents, directly or by implication, have made false statements and representations on the streamers, flyers and inserts used with and attached to their products in the following particulars:

1. Their said products had been moth-proofed and bacteria-proofed, whereas they admitted in their testimony this was untrue, and both of respondents' suppliers of batting deny that the batting sold respondents was moth-proofed or bacteria-proofed;
2. Certain of their products have been manufactured by Pepperell Manufacturing Company whereas respondents' answer and the alleged wool label attached to one of their comforters states, "Made by the Ettinger Manufacturing Co." with their address as found herein;
3. The filling or padding contained in certain of their products was composed of all wool, whereas the testimony and other evidence is quite to the contrary;
4. That the amount of \$24.95 or the specified prices on their

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advertising inserts are the prices at which their said products were sold by retailers in their usual and regular course of business. Respondents admitted these prices were set arbitrarily by them to meet competition or to satisfy a retail purchaser of their product and that in fact the actual prices at which respondents' products were sold by the retail trade ranged between \$19.95 and \$7.95 and that the price to the retail trade charged by respondents was only \$4.75. The evidence of two buyers of comforters for large department stores indicated that the usual markup of products of this nature was from 34 percent to 40 percent but that respondents' products which they had examined were a very cheap product that would actually sell from about \$4 to \$7.95 regardless of any price set out in respondents' advertising streamers attached thereto.

By means of the acts and practices as hereinbefore set forth, respondents place in the hands of retailers, means and instrumentalities whereby such retailers may mislead and deceive members of the purchasing public with respect to statements and representations hereinbefore found made by the respondents. The evidence establishes that respondents did sell to retailers in interstate commerce not only their comforters which were not wool but that there were attached thereto false and misleading streamers, flyers and inserts which the public were able to observe during their purchase of such products.

Respondents admit that in the course and conduct of their business they were in competition in interstate commerce with other corporations, firms and individuals who also engaged in the sale of wool products.

The use by the respondents of the false, deceptive, and misleading statements and representations, hereinbefore found, has had and now has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are and were true and into the purchase of substantial numbers of respondents' said products because of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce is and has been unfairly diverted to the respondents from their competitors, and substantial injury has been and is being done by competition in commerce.

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1. The acts and practices of the said respondents, as herein-

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above found, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

2. The Federal Trade Commission has jurisdiction over all of the respondents' 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 respondents Ettinger Manufacturing Company, a corporation, and its officers, and Homer V. Lundeborg and Lawrence A. Jacobson, individually and as officers 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 bed comforters 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;

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(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 Ettinger Manufacturing Company, a corporation, and its officers, and Homer V. Lundeberg and Lawrence A. Jacobson, individually and as officers 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 bed comforters or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

1. Representing that bed comforters or other products are moth proofed or bacteria proofed when such is not a fact.
2. Representing that their bed comforters or other products are manufactured by Pepperell Manufacturing Company or any other corporation, person or firm, unless such is the fact.
3. Misrepresenting in any way the constituent fiber or material used in their products or the respective percentages thereof.
4. Representing in any manner that certain amounts are the regular and usual retail prices of their products when such amounts are in excess of the prices at which such products are usually and customarily sold at retail.

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 23d day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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.

IN THE MATTER OF
CHATHAM MANUFACTURING COMPANY

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

Docket 7057. Complaint, Feb. 7, 1958—Decision, Sept. 23, 1958

Consent order requiring a manufacturer in Elkin, N.C., to cease misrepresenting the fiber content of blankets by such practices as including with mixed fiber blankets, mailing inserts bearing the word "Nylon" in conspicuous headlines; by failing to disclose the rayon content in blankets simulating silk or wool, and the acetate in bindings manufactured to simulate silk; and to cease describing its blanket bindings in advertising as "Guaranteed" without disclosing the nature and extent of said guarantee.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. J. Milton Cooper, of Washington, D. C., and Womble, Carlyle, Sandridge & Rice, by Mr. C. W. Womble, of Winston-Salem, N.C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint alleges that in its manufacture of blankets containing various fibers, including nylon, rayon, and cotton, with bindings composed of acetate, respondent has violated the Federal Trade Commission Act by failing clearly to disclose such fiber content, so that the purchasing public is led to believe, contrary to fact, that the blankets contain silk or wool, or that said products contain larger proportions of such fibers than is actually the fact.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement identifies respondent, Chatham Manufacturing Company as a corporation existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at Elkin, N. C.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of