

IN THE MATTER OF
UNITED FELT COMPANY, ET AL.

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

Docket 7132. Complaint, Apr. 29, 1958—Decision, Oct. 21, 1959

Order requiring a Chicago manufacturer to cease violating the Wool Products Labeling Act by labeling as "70% reprocessed wool, 30% man-made fibers" and as "95% reprocessed wool, 5% other fibers," rolled battings which in each instance contained substantially less wool and more non-woolen fibers than was thus indicated: and by failing to comply in other respects with the labeling provisions of the Act.

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

Mr. William A. Somers for the Commission.

Mr. Hymen S. Gratch, of Chicago, Ill., for respondents.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

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 on April 29, 1958, issued and subsequently served its complaint in this proceeding upon respondents, charging them with violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and, as specified under the provisions of the aforesaid Act, with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. After the filing of answer, and amended answer, by respondents, hearings were held before a duly designated hearing examiner of the Commission and testimony and other evidence in support of, and in opposition to, the allegations of the complaint were received into the record. In an initial decision filed March 6, 1959, the hearing examiner held that jurisdiction over respondents had not been established. Accordingly, he ordered that the complaint be dismissed.

The Commission having considered the appeal filed from the initial decision by counsel supporting the complaint, briefs submitted by counsel on both sides, and the entire record, has determined that the appeal should be granted and that the initial decision should be vacated and set aside. The Commission further finds that this proceeding is in the public interest and now makes this its findings as to the facts, conclusions drawn therefrom and order to cease and desist, the same to be in lieu of those contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent United Felt Company is a corporation organized, existing and doing business under any by virtue of the laws of the State of Illinois. Respondents Arnold Willis and Max Sussman are individuals and are President-Treasurer, and Secretary, respectively, of the corporate respondent. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent. Respondents' office and principal place of business is located at 3729 South St. Louis Avenue, Chicago 32, Illinois.

2. Respondent United Felt Company is engaged in the manufacture of wool batting by garnetting it from raw material supplied by sources in Illinois. Wool batting is a "wool product" within the meaning of the Wool Products Labeling Act of 1939. Subsequent to the effective date of that Act, and more particularly since September, 1955, respondents have manufactured for introduction into

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commerce and have sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in that Act, their wool batting.

3. The wool batting in question consists of five rolls sold and delivered by respondents within the City of Chicago—two rolls to Allan Quilting Company and three rolls to LaSalle Quilting Company. These two concerns are engaged in the quilting business, that is, they quilt fabrics or yard goods sent to them by their customers to wool batting purchased from respondents and then return the finished goods to their customers. Those customers use the finished, or quilted, fabrics in linings for men's and women's coats and jackets, in bed comforters, etc. Both Allan and LaSalle do quilting for, and ship the finished goods to, customers located both within and without the State of Illinois.

4. Approximately 97 percent of respondents' wool batting is sold within the State of Illinois, the remaining three percent outside that State, all the latter to one customer.

5. The respondents in the course and conduct of their business were and are in competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including rolled wool batting.

6. Certain rolled wool batting manufactured by respondents for introduction into commerce and sold to Allan Quilting Company and to LaSalle Quilting Company was misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act in that it was falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein.

7. Labels attached by respondents to rolls of batting concerning which evidence was adduced in this proceeding showed the fiber content of the batting to have been "70% reprocessed wool, 30% man made fibers" and "95% reprocessed wool, 5% other fibers." A Commission expert tested two samples of each roll and the results of those tests show the actual fiber content to have been as follows.

As to the two rolls sold to *Allan Quilting Company*:

<i>Respondents' Label</i>	<i>Commission Test Results</i>
<i>Com. Ex. 1B</i>	<i>Com. Ex. 1A</i>
70% wool	47% wool
30% man made fibers	53% residue—acetate, rayon and other fibers
<i>Com. Ex. 2B</i>	<i>Com. Ex. 2A</i>
95% reprocessed wool	88.5% wool
5% other fibers	11.5% residue—cotton, rayon, nylon and traces of other fibers

As to the three rolls sold to *LaSalle Quilting Company*:

<i>Respondents' Label</i>	<i>Commission Test Results</i>
<i>Com. Ex. 3B</i>	<i>Com. Ex. 3A</i>
70% reprocessed wool	38.2% wool
30% man made fibers	61.8% residue—cotton, rayon, orlon and nylon
<i>Com. Ex. 4B</i>	<i>Com. Ex. 4A</i>
70% reprocessed wool	34.7% wool
30% man made fibers	65.3% residue—cotton, rayon, nylon, dacron and orlon
<i>Com. Ex. 5B</i>	<i>Com. Ex. 5A</i>
70% reprocessed wool	52.2% wool
30% man made fibers	47.8% residue—cotton, rayon, nylon and orlon

8. From the foregoing summary, it is seen that respondents have overstated the wool content of the rolls of batting in question by percentage points ranging from 6.5 to 35.3. (The testimony of the Commission expert as to the results of the above tests does not purport to show a breakdown of the wool content of each sample as between the percentage of wool, reprocessed wool, or reused wool, as such terms are defined in the Wool Products Labeling Act of 1939.)

9. Certain rolls of said wool batting were further misbranded in that they did not have on or affixed to them a stamp, tag, label or other means of identification showing each fiber other than wool contained in said batting in quantities of 5% or more by weight as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939. Tests of samples of several of these rolls, as summarized above, disclose that fibers other than wool were present as follows: Com. Ex. 3A—four fibers comprising 61.8% of the fiber weight of the product; Com. Ex. 4A—five fibers comprising 65.3% of the fiber weight of the product; Com. Ex. 5A—four fibers comprising 47.8% of the fiber weight of the product. On the face of the results of these tests, it is apparent in each of the instances here cited that at least one of those fibers other than wool was present in each product in an amount of 5% or more of the total fiber weight of such product. Thus it is clear that respondents' failure to affix labels to their rolls of wool batting showing "each fiber other than wool if * * * [the] percentage by weight of such fiber is 5 percentum or more" constitutes a violation of Section 4(a)(2) of the Act.

10. While the complaint also charged, in Paragraphs Seven and Eight thereof, that misrepresentations, similar to those mentioned above in paragraphs 6 and 9, had been made by respondents on sales invoices and shipping memoranda, this portion of the com-

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plaint, upon motion of counsel supporting the complaint, was dismissed at the conclusion of the hearings. Accordingly, provision is made for dismissal of said paragraphs 7 and 8 of the complaint in the order appearing hereafter.

CONCLUSIONS

From all of the foregoing facts, the Commission has reached the following conclusions of law:

1. Respondents have misbranded wool products within the intent and meaning of Sections 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

2. The acts and practices of respondents are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts or practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction over all of the respondents' acts and practices which have been hereinabove found to be violative of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act.

ORDER

It is ordered. That respondent United Felt Company, a corporation, and its officers, and Arnold Willis and Max Sussman, 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 wool batting 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 "re-used wool," 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 affix labels to such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the charges of the complaint contained in paragraphs 7 and 8 thereof be, and they hereby are, dismissed.

It is further ordered, That 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.

OPINION OF THE COMMISSION

By KINTNER, *Chairman*:

This matter is before the Commission for final determination on the merits upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision dismissing the complaint on the ground that jurisdiction has not been established. The complaint alleges that respondents have violated the Federal Trade Commission Act,¹ and the Wool Products Labeling Act² and the Rules and Regulations³ promulgated thereunder. The appeal was submitted on briefs, oral argument not having been requested.

On the basis of the whole record before it, the Commission has determined that the action of the hearing examiner in dismissing the complaint was erroneous. Accordingly, for the reasons hereinafter set forth, the appeal of counsel supporting the complaint is being granted and the Commission is entering its own findings, conclusions and order to cease and desist.

Specifically, the complaint charges that respondents have misbranded rolled batting in violation of Section 4(a)(1) of the Wool Products Labeling Act by labeling such batting to show that it contained certain stated percentages of wool, reprocessed wool, and other fibers when actually the stated percentages of wool and other fiber content were false and deceptive. It also charges that respondents have further misbranded their batting by not stamping, tagging, or labeling it as required under the provisions of Section 4(a)(2) of the Act.⁴

Respondents manufacture wool batting, which is a "wool product" as that term is defined in the Wool Products Labeling Act, by garnetting it from raw material supplied by sources in Illinois. They sell 97% of their batting to customers within the State of Illinois.

¹ 15 U.S.C.A. 41 et seq.

² 15 U.S.C.A. 68 et seq.

³ 16 C.F.R. 300.1 et seq.

⁴ Similar misrepresentations were charged as having been made by respondents on sales invoices and shipping memoranda; but this portion of the complaint, on motion of counsel supporting the complaint, was dismissed at the conclusion of the hearings. Such portion of the complaint, therefore, is not involved in this appeal.

The remaining 3% is sold to a single customer outside the state, but there is nothing in the evidence to indicate that any of that 3% has been misbranded.

The case here involves five rolls of batting sold and delivered by respondents to two customers in Chicago who are engaged in the quilting of fabrics for use in the linings of men's and women's coats and jackets, in bed comforters, etc. The evidence is uncontradicted that the batting sold to these two customers—two rolls to Allan Quilting Company and three rolls to LaSalle Quilting Company—contained smaller percentages of wool or reprocessed wool than those set forth on the labels attached thereto by respondents. The overstatement of wool content of the rolls of batting in question ranges in percentage points from 6.5 to 35.3. It is thus clear that the products with which we are concerned were misbranded within the meaning of Section 4 of the Wool Products Labeling Act. The question for decision is whether, in the circumstances disclosed by the record, respondents are subject to the requirements of the Act. Respondents contend they are not, first, because they did not introduce into commerce, nor sell, transport or distribute in commerce, the batting in issue, and secondly, because there is no evidence that the batting ever actually found its way into commerce, that is, that it was used in the quilting of fabrics which moved in commerce, or that respondents had knowledge that the products manufactured by them were ultimately to be shipped in commerce. Hence, they say, it cannot be found that the batting was manufactured for introduction into commerce.⁵

Oscar R. Johnson, Vice President of the Allan Quilting Company, testified that his company purchases all of its wool batting from respondent, United Felt Company; that the batting is quilted to fabrics which Allan's customers send it for processing, after which the quilted batting is incorporated by those customers in products which they manufacture; and that Allan's customers are located throughout the United States, but that it does not ship into all states. Mr. Johnson, in response to a direct question, stated that during his dealings and conversations with Mr. Willis, President

⁵ Section 3 of the Wool Products Labeling Act reads as follows:

"The introduction, or *manufacture for introduction, into commerce*, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this Act or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this Act and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act." 15 U.S.C.A. 68a. [Emphasis supplied.]

of respondent, United Felt Company, he had informed Mr. Willis that Allan Quilting Company did have customers outside the State of Illinois, to wit: "On occasion I think I have mentioned the fact, certainly, yes." On cross and re-cross examination, Mr. Johnson recanted somewhat his testimony that respondents had knowledge of where his company's customers are located. The record also discloses a course of dealing between respondent, United Felt Company, and its customer, Allan Quilting Company, over a period of from eight to ten years.

As to LaSalle Quilting Company, the evidence shows that, for a period of six or more years, respondent, United Felt Company, has been the former's sole source of supply for wool batting. It also discloses that LaSalle puts the respondents' batting with material submitted by LaSalle's customers through a quilting process after which it is returned to such customers in yardage form. The foregoing is established by the testimony of Mr. Arthur D. Rifas, President, LaSalle Quilting Company, who also testified that his customers are located principally throughout the midwest.

While there is some conflict in the evidence as to respondents' actual knowledge of the ultimate destination of their products, we think the record clearly establishes that the misbranded batting did in fact find its way into commerce in the form of quilted products sold and delivered by Allan and LaSalle to their customers outside the State of Illinois. Both these companies, the record discloses, over a long period of dealing, have depended upon respondents as their sole source of supply for wool batting and both have shipped in commerce substantial amounts of quilted material containing respondents' batting. While respondents may not have had any actual pre-knowledge of that fact, they certainly should have anticipated it. In the circumstances, we do not consider actual knowledge to be essential.

Any other view, it seems to us, would do violence to the obvious intention of Congress in the enactment of the Wool Products Labeling Act. Section 3 clearly covers those who introduce misbranded wool products into commerce. By adding to Section 3 the further classification of those who "manufacture for introduction," it is clear that the Congress intended to include in the Act's coverage manufacturers who do not themselves "introduce" wool products, but whose goods are in fact introduced into commerce by subsequent handlers or processors. Congress obviously did not intend the Act to be enforceable only against those who actually ship misbranded goods across state lines. The plain language of the Act clearly shows that everyone in the chain of events commencing with the

initial manufacturer down to the ultimate consumer is expected to fully discharge his responsibilities and duties under the Act and answer for any violations thereof attributable to him. In the instant case, while the record forecloses any finding that respondents sold, transported or distributed misbranded wool products in interstate commerce, we think the circumstances are such that we may reasonably infer that they did manufacture the misbranded wool products here involved for introduction into commerce.

The meaning of the phrase with which we are immediately concerned in this proceeding, as used in the Wool Products Labeling Act of 1939, has not been resolved heretofore by the Commission or by the Courts. However, a similar term in the Fair Labor Standards Act⁶ has on a number of occasions been construed by the Courts.

Under that Act, a manufacturer of cigar boxes who sold and delivered such boxes in intrastate commerce to cigar manufacturers, who later packaged cigars in the boxes and sold them in interstate commerce, has been held to be "one engaged in the production of goods for commerce." Specifically, the Court said:

It is of no consequence that its activities in connection with the product were at an end prior to any shipment of the boxes in interstate commerce. *Enterprise Box Co. v. Fleming*, 125 F. 2d 897 (C.A. 5, 1942), cert. denied 316 U.S. 704.

And, in a case involving concerns who were contractors in the garment industry in New York whose production was sold to wholesalers and other processors in New York City, who, in turn, sold and shipped the goods in interstate commerce, the Supreme Court said:

Certainly if these tenants had not only manufactured but also shipped their products interstate, no one would doubt that they were producers for commerce. Mere separation of the economic processes of production for commerce between different industrial units, even without any degree of common ownership does not destroy the continuity of production for commerce. *Producers may be held to know the usual routes for distribution of their products. Schulte v. Gangi*, 328 U.S. 108 (1946). [Emphasis added.]

In the recent case of *DeGorter v. Federal Trade Commission*, 244 F. 2d 270 (C.A. 9, 1957), Judge Yankwich, in interpreting the commerce clause of the Fur Products Labeling Act, which contains a provision identical to the one herein questioned, said:

In regulating interstate transactions it is not necessary that the regulation be confined to persons who are also engaged in interstate commerce.

From the foregoing, we conclude that the appeal of counsel supporting the complaint is well taken and that it should be, and it

⁶ 29 U.S.C.A. 201 et seq.

