

hereby is, granted. An appropriate order will issue vacating and setting aside the initial decision and substituting in lieu thereof the Commission's own findings as to the facts, conclusions and order to cease and desist.

IN THE MATTER OF
SOUTH VILLAGE MILLS, INC., ET AL.

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

Docket 7217. Complaint, Aug. 4, 1958—Decision, Oct. 21, 1959

Order requiring the general manager of a manufacturer of wool products in Webster, Mass., to cease violating the Wool Products Labeling Act by tagging and invoicing as "100% Vicuna," woolen fabrics which did not contain vicuna or contained substantially less than said quantity, and by failing to label wool products as required by the Act.

The other respondents in the proceeding agreed to a consent order effective Dec. 20, 1958, 55 F.T.C. 906.

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

Mr. Thomas F. Howder and *Mr. Thomas A. Ziebarth* for the Commission.

Ely, Bartlett & Brown, of Boston, Mass., for respondent.

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, the Federal Trade Commission on August 4, 1958, issued and subsequently served upon the respondents, South Village Mills, Inc., a corporation, and Edward Kunkel, individually and as an officer of such corporation, and Joseph Crowley, individually and as General Manager of such corporation, its complaint, charging said respondents with the misbranding of wool products in commerce in violation of the provisions of the aforementioned Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act.

On November 7, 1958, the hearing examiner filed an initial decision as to respondents, South Village Mills, Inc., and Edward Kunkel, which decision was based on an agreement containing a consent order to cease and desist. This decision became the decision of the Commission on December 20, 1958.

On November 7, 1958, the hearing examiner also filed an initial decision as to respondent Joseph Crowley based on his default in

Findings

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failing to file an answer or to enter an appearance at the scheduled hearing. The examiner found the facts to be as alleged in the complaint with respect to this respondent and entered an order to cease and desist the unlawful practices. Said respondent on November 21, 1958, filed a document treated as a notice of intention to appeal. The Commission, thereafter, on January 26, 1959, ordered that the initial decision as to respondent Crowley be set aside and remanded to the hearing examiner to provide said respondent with an opportunity to present his defense. A hearing was held in due course. On June 8, 1959, the hearing examiner filed another initial decision as to respondent Joseph Crowley dismissing the charges as to him on the ground that the practices found to be unlawful were voluntarily discontinued.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint filed an appeal from the initial decision as to respondent Joseph Crowley filed on June 8, 1959, and the Commission, after considering said appeal, no answer having been filed by respondent Crowley, and the entire record herein, rendered its decision granting the appeal and vacating and setting aside the initial decision.

The Commission, now having the matter before it for final consideration, makes the following findings as to the facts, conclusions drawn therefrom, and order, which, together with the aforesaid decision on the appeal, shall be in lieu of the initial decision of the hearing examiner as to respondent Joseph Crowley filed June 8, 1959.

FINDINGS AS TO THE FACTS

1. Respondent Joseph Crowley was General Manager of the corporate respondent, South Village Mills, Inc., at or about the time the complaint herein was issued. For the period during which the acts and practices herein alleged took place, Joseph Crowley cooperated in the formulation, direction and control of the acts and practices of the corporate respondent. The address of Joseph Crowley is now P.O. Box 177, Webster, Massachusetts. He is no longer employed by the corporate respondent as its General Manager or in any other capacity. He is now engaged in the same general type of work as he was during the time the acts and practices alleged in the complaint took place.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since October, 1957, respondent Crowley, as General Manager of corporate respondent, has manufactured for introduction into commerce, 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.

3. Certain of said wool products were misbranded by respondent Crowley, as General Manager of corporate 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 woolen fabrics labeled and tagged as "100% Vicuna," whereas, in truth and in fact, said fabrics either did not contain Vicuna, or contained substantially less than said quantity of Vicuna.

4. Said products were further misbranded within the intent and meaning of said 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.

5. Respondent Crowley, as General Manager of corporate respondent, in the conduct of his business, was in competition, in commerce, with others engaged in the sale of wool products identified as Vicuna.

6. Respondent Crowley, as General Manager of corporate respondent, in the course and conduct of his business, as aforesaid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, has misbranded the fiber content of certain wool products, in that they have been falsely and deceptively described and identified in sales invoices and memoranda related thereto as "100% Vicuna," whereas, in truth and in fact, said products either did not contain Vicuna, or contained substantially less than said quantity of Vicuna.

7. Such acts and practices have had, and now have, the tendency and capacity to mislead and deceive 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

The acts and practices found in Paragraphs 3 and 4 hereof constitute misbranding of wool products and are in violation of the Wool Products Labeling Act. Such acts and practices as well as those set out in Paragraph 6 are to the prejudice of the public and of respondent's 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.

Opinion

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ORDER

It is ordered, That respondent Joseph Crowley, and his 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 or 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 such products are defined in and subject to the Wool Products Labeling Act of 1939, 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 or 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 respondent Joseph Crowley and his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool products or any other products or materials in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

Misrepresenting the constituent fibers of which their products are composed or the percentages or amounts thereof in sales invoices, shipping memoranda or in any other manner.

It is further ordered, That respondent Joseph Crowley 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.

OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

This matter is before the Commission upon the appeal of counsel in support of the complaint from the initial decision of the hearing examiner filed June 8, 1959, dismissing the charges of the complaint as to respondent Joseph Crowley, who was therein named individually and as general manager of the corporate respondent.

The respondents in this case were charged with violating the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act. An initial

decision filed November 7, 1958, based on an agreement for a consent order to cease and desist, which was adopted as the decision of the Commission on December 20, 1958, disposes of the proceeding as to respondents, South Village Mills, Inc., and Edward Kunkel. An initial decision filed June 8, 1959, dismisses the charges as to respondent Crowley on the ground that the practices found to be unlawful were discontinued voluntarily. Counsel in support of the complaint have appealed from the dismissal. Respondent Crowley has not filed an answer to the appeal.

The question before us is whether the hearing examiner properly dismissed the complaint as to respondent Crowley on the ground of discontinuance or abandonment.

The examiner found, among other things, that the manufacture and sale of the fabric in question was discontinued more than a year ago, although he does not mention the date from which the year is calculated. He further found that there seemed to be no probability of a renewal of the practice. We have considered these and other circumstances mentioned by the examiner and conclude that they fail to justify the dismissal.

There is no record basis for the finding of a voluntary discontinuance. The record indicates that respondents were on notice as to possible misbranding in connection with the questioned fabric as early as March, 1958, when doubt as to the labeling of this fabric was specifically raised by an investigator for the Federal Trade Commission. On May 29, 1958, upon complaint and motion by the Federal Trade Commission, a temporary restraining order against the respondents was granted by a Federal District Court, enjoining the practices here alleged. Respondents, therefore, were well advised as to the possible illegality of their practices long before the issuance of the complaint in this proceeding on August 4, 1958. Yet, during this period, sales continued. Documentation in the record shows sales as late as April 17, 1958.

Respondent Crowley with reference to the discontinuance of the activities here involved testified:

Well, on Wednesday or Thursday of that week we had gotten our papers serving us on the citation and it was only a few days after that that we had to appear in court in Boston and it was only a couple of months after we had appeared in Boston that Mr. Kunkel decided that he couldn't afford to stay in the fabric business and he would have to stop making fabric because the bank had tied up all his money on account of the FTC decision and there was a question whether it was Vicuna.

This seems to indicate that it was sometime around the end of

July, 1958, when respondent finally discontinued the manufacture and sale of the questioned fabric. It was on May 29, 1958, that the temporary restraining order was granted.

There is some record evidence that respondents considered discontinuing the production and sale of the fabric in dispute in the early months of 1958, but clearly they did not do so. The substantial evidence is that discontinuance took place only after the Commission began looking into the matter. In such circumstances dismissal is rarely warranted. *Ward Baking Company*, Docket No. 6833 (June 23, 1958). Respondent Crowley, since severing his relationship with corporate respondent, has taken employment where he is engaged in substantially the same kind of business activity. There is no assurance, therefore, that the practices engaged in by respondent Crowley and found to be unlawful have been finally stopped.

We conclude that the examiner erroneously dismissed the complaint as to respondent Crowley. Accordingly, the appeal of counsel in support of the complaint is granted and the initial decision is vacated and set aside. Our findings as to the facts, made on the whole record including the initial decision, and conclusions and order to cease and desist, are issuing in lieu thereof.
