

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

*Docket 7373. Complaint, Jan. 23, 1959—Decision, Nov. 11, 1959*

Order requiring manufacturers in New Bedford, Mass., to cease violating the Wool Products Labeling Act by failing to label woolen interlining materials with fiber content information.

*Mr. Thomas A. Ziebarth* and *Mr. John T. Walker* for the Commission.

*Mr. Morris Lefkowitz* for himself and respondent corporation.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding is one brought under the Wool Products Labeling Act of 1939 (for brevity hereinafter referred to as the Wool Act) and the rules and regulations promulgated thereunder and charges respondents with certain violations of said Act pertaining to their failure to affix, to wool products manufactured by them, stamps, tags, labels, or other means of identification showing certain items of information required by said regulations and hereinafter more fully referred to. It is alleged that such matters constitute unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act.

In this initial decision the charges of the complaint are found to be sustained by the evidence as to both respondents.

Complaint was issued January 23, 1959, and was thereafter duly served upon respondents. Respondents submitted a letter generally denying the allegations of the complaint and requesting a hearing and dismissal of the proceeding. This letter was placed on file and treated as an answer. On August 6, 1959, a hearing was held in New York City, whereat the evidence of counsel supporting the complaint and that of respondents was duly presented and the parties given to and including September 15, 1959, in which to file their respective proposed findings of fact, conclusions of law, and order. Respondents have filed none but counsel supporting the complaint has submitted proposals, all of which have been adopted in *haec verbae* or in substance and effect.

Upon the whole record herein including all exhibits received in evidence and the testimony of the witnesses whose conduct and demeanor was under observation during said hearing, the examiner makes the following:

FINDINGS OF FACT

Respondent Modern Rug Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Morris Lefkowitz is president of the corporate respondent and formulates, directs and controls the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter re-

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ferred to. The respondents have their office and principal place of business at 95 Rodney French Boulevard, New Bedford, Massachusetts.

It appears from the record that there are two stockholders in the corporation, said respondent Lefkowitz and one Martin Berdy (whose name is erroneously spelled Burdy in the transcript), the latter being treasurer of the corporate respondent. Each stockholder owns fifty percent of the stock. Respondent Lefkowitz is the general manager of the business while Berdy is in charge of selling. At the request of counsel supporting the complaint official notice is taken by the examiner that said Martin Berdy was respondent in a prior proceeding, Docket No. 6950, in the Matter of Martin Berdy, an individual, and a cease and desist order, issued as a part of the initial decision of the undersigned examiner on February 27, 1958, was duly affirmed by the Commission on May 29, 1958. Of all those matters, Martin Berdy had full notice. He was not made a party to the instant proceeding. Normally in an action of this type against such a corporation, the complaint would name all officers who participated in the acts and practices alleged in the complaint or who held and owned a controlling majority of the stock, as is the case here. Since the cease and desist order in Docket 6950 included all the prohibitions against said Martin Berdy which are sought in this proceeding against respondents herein, the issuance of a further order against him would not seem necessary and would merely be duplicitous. For that reason the examiner has not required the complaint to be amended to include the said Berdy as a respondent both individually and in his corporate official capacity.

It is to be especially noticed, of course, that it was found in the former proceeding that Berdy knowingly and wilfully violated the Wool Act, in substance because he needed the money. It was further found therein that Berdy traded under several names including that of the corporate respondent herein at the same address as in the instant proceeding.

Subsequent to the Wool Act, and more especially since January 1, 1957, respondents have 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.

Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, or labeled as required under the provisions of §4(a)(2) of the Wool Act and in the man-

ner and form prescribed by the rules and regulations promulgated under said Act.

The respondents, in the course and conduct of their business as aforesaid, were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the manufacture and sale of wool products, including interlining materials.

The acts and practices of the respondents as set forth above were and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated 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.

From the record it is clear that respondents herein engaged in the spinning, weaving and finishing of woven woolen interlining materials, among other things, on a commission basis for Yorktown Textile & Trimming Corporation of New York. This latter concern bought its raw materials from Derry Fiber Mills, Inc., of Derry, New Hampshire, and caused such raw materials to be shipped directly to respondent corporation, which under its contract with Yorktown manufactured such raw wool stocks and after the same had been finished, shipped them from its plant in New Bedford, Massachusetts, to Yorktown in New York City. The record discloses without challenge that in a number of instances such woolen interlining materials manufactured and shipped by respondents did not contain any fiber identification in any form whatsoever.

Respondents urge as a basis for dismissal that one who manufactures wool products on a commission basis and never takes title to the products used in the manufacture of such wool products is not bound by the Wool Act to label them for shipment as required by said Act and the regulations thereunder. However, §3 of the Wool Act provides:

§3. *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 method of competition, and an unfair and deceptive act and practice, in commerce, within the intent and meaning of 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 de-*

ceptive act and practice within the intent and meaning of the Federal Trade Commission Act. [Emphasis supplied.]

The only exceptions set forth in this section of the Wool Act are common carriers and persons manufacturing, etc., for export. §4 of said Act sets forth the manner and form in which the labeling of wool products shall be accomplished and forbids various forms of misrepresentations.

In the instant proceeding, respondents are charged under §4(a) (2) and the Commission's Rules and Regulations thereunder which require that the percentage by weight of wool contained in a wool product and the classification of the wool contained therein be set forth affirmatively on each stamp, tag, label, or other means of identification.

It is respondents' position that insofar as title to the material in question never passed to them that they are not liable under the Wool Act. An examination of the Act and the Rules and Regulations thereunder reveals, however, that such a defense is without merit. Under §3 of the Act, respondents indubitably have introduced into commerce, manufactured for introduction into commerce and distributed in commerce, wool products which were misbranded within the meaning of the Act. The only thing that they did not do was to sell misbranded wool products. The materials were only manufactured on a commission basis and were not sold by respondents to their customers. It is wholly immaterial that they did not take title to or sell the goods. Respondents manufactured and delivered for shipment in commerce misbranded wool products. The Act makes no distinction as to whether the misbranded wool products are the property of the person who misbrands at the time of the misbranding or whether such misbranding is accomplished on someone else's material under commission.

The Wool Act must be read in its entirety and its expressed legislative purpose in the title is:

To protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products, and for other purposes.

The terms of the Act literally require that wool products be labeled as to their fiber content, etc., from the time the wool is shorn from the back of sheep until it is sold and delivered to the ultimate consumer in the form of a garment. The orderly intended and effective administration provided by Congress in the Wool Act for the purpose of regulating the wool industry requires that the chain of labelling and fiber identification remain unbroken through-

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out the entire manufacturing and marketing cycle. Respondents, by their failure to affirmatively label as required by the Act, have broken this chain. All manufacturers of wool products must obey the law, whether they take title to the unmanufactured product or not.

Respondents' defense that they merely label as they are instructed to label by their customers is without merit, as no one can legally require a person to violate the law. Moreover, there is nothing in the record to indicate that Yorktown Textile and Trimming Corp., respondents' customer, instructed respondents not to set forth the fiber content. The testimony of Yorktown's president, Samuel Levy (R. 36-44) is that he did not so direct respondents. His instructions to them were only as to the grade, quality, quantity, dates of delivery, color and so forth.

The literal interpretation of §3 of the Wool Act clearly requires all persons engaged in shipping of wool products in commerce to set forth the fiber contents by means of a stamp, tag, label or other means of identification thereon. Respondents have failed to do this. They are, therefore, guilty of misbranding within the intent and meaning of §3 as more specifically defined in §4(a)(2) of said Wool Act. Accordingly, an order to cease and desist from failing to affirmatively label wool products as required by the Act is in the public interest.

## CONCLUSIONS OF LAW

Out of the foregoing findings of fact, the following conclusions of law are drawn by the hearing examiner:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents;
2. This proceeding is to the interest of the public and such interest is specific and substantial;
3. The acts and practices of the respondents, as hereinabove found, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute violations of the Wool Products Labeling Act of 1939 and unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER

*It is ordered.* That respondents Modern Rug Company, Inc., a corporation, and its officers, and Morris Lefkowitz, individually,

and as officer of said corporation, and respondents' representatives, agents or 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 interlining materials or other 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. 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) re-used wool, (4) each fiber other than wool where said percentages by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total weight of such wool product of any non-fibrous 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.

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 11th day of November, 1959, 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.

Decision

IN THE MATTER OF

J. A. DEKNATEL & SON, INC., ET AL.

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

*Docket 7529. Complaint, June 26, 1959—Decision, Nov. 11, 1959*

Consent order requiring a distributor in Queens Village, N.Y., to cease advertising falsely as made in the U.S.A., beads used for making identification bracelets and necklaces for newborn babies in hospitals, and to cease selling the beads without revealing that the pink and blue beads, comprising a substantial portion of the finished products, were made in Japan.

*Mr. Charles W. O'Connell* supporting the complaint.  
*Larson & Taylor*, of Washington, D.C., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On June 26, 1959, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission caused to be issued its complaint in this proceeding to which the above-named parties were respondents. A true copy of said complaint was served upon respondents as required by law. The complaint charges respondents with violating the provisions of the Federal Trade Commission Act by the use of false, misleading and deceptive representations that products sold by them are manufactured entirely in the United States when in fact they are not, and failure to disclose that all or substantial portions of said products are in fact made or manufactured outside the United States, in Japan. After being served with said complaint, respondents appeared by counsel and entered into an agreement dated September 9, 1959, which purports to dispose of all of this proceeding as to all parties without the necessity of conducting a hearing. The agreement has been signed by all of the respondents, their counsel, and by counsel supporting the complaint; and has been approved by the Acting Director and the Assistant Director of the Bureau of Litigation of this Commission. Said agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in this proceeding. On September 16, 1959, the said agreement was 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 agreed that