

IN THE MATTER OF

SAM GOLDMAN ET AL. TRADING AS
EXCELLED SHEEPSKIN & LEATHER COAT CO.

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

Docket 7473. Complaint, Apr. 13, 1959—Decision, May 13, 1960

Order requiring a New York City manufacturer of leather jackets and coats for men and boys to cease violating the Fur Products Labeling Act by improperly describing in advertising the fur collars on said jackets, and by failing to disclose, in labeling and invoicing, the true name of the fur-producing animal and the fact that the fur was dyed.

Mr. Thomas A. Ziebarth for the Commission.

Mr. Paul Kozinn, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondents have violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, and in doing so have engaged in acts and practices which constitute unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act.

The particular violations charged are:

A. That certain wool products were misbranded in violation of §4(a)(2) of the Wool Act and as prescribed by the Rules thereunder;

B. That certain fur products were misbranded in that they were not labeled as required by §4(2) of the Fur Act and as prescribed by the Rules thereunder;

C. That certain fur products were falsely and deceptively invoiced in that they were not invoiced as required by §5(b)(1) of the Fur Act and as prescribed by the Rules thereunder; and

D. That certain fur products were falsely and deceptively advertised in that respondents

(a) Failed to disclose the name or names of the animal or animals that produced the fur contained in the fur product as set forth in the Fur Products Name Guide, in violation of §5(a)(1) of the Fur Products Labeling Act;

(b) Failed to disclose that fur products were composed of bleached, dyed or otherwise artificially colored fur, in violation of §5(a)(3) of the Fur Products Labeling Act.

Upon consideration of the entire record, after hearings and the filing of proposed findings and conclusions, the following findings are made.

1. Respondents Sam Goldman and Sol Goldman are doing business individually, and as copartners trading as Excelled Sheepskin & Leather Coat Co., with their office and principal place of business located at 832 Broadway, New York, New York.

2. They are now and have been for several years engaged in the manufacture and sale of leather jackets and coats. Respondent Sol Goldman has been in the leather coat business for 32 years. They sell only to the wholesale or jobber trade, and their business amounts to approximately three-quarters of a million dollars per year. They do no retail business.

Their garments, some of which contain wool or part-woolen interlinings, and some having fur collars, have been sold and transported by respondents to customers living in states other than the one in which respondents' place of business is located, and in connection with such transactions respondents have engaged in commerce as that term is defined in the Wool Products Labeling Act and in the Fur Products Labeling Act. They have also manufactured for sale, sold, advertised and distributed fur products made in whole or in part of fur which had been shipped and received in commerce. Their business in commerce is substantial.

3. Some of respondents' coats have quilted interlinings; some have, or in the past had, fur collars. The interlinings and the fur collars are the two items that are in dispute in this proceeding. In 1957 respondents made approximately 80,000 leather coats or jackets, of which approximately 5,000 had quilted linings and about 1,000 had fur collars. In 1958 the total production was greater, but the number of garments with quilted interlinings and fur collars was less. The amount of interlining per full-size coat is approximately one yard and costs the manufacturer 18¢ to 20¢ per garment. Fur is purchased by respondents at from 50¢ to 55¢ per foot, and each garment to which a fur collar is attached requires about three-quarters of a foot of fur.

4. The quilted interlinings used by respondents for added warmth consist of three layers—a layer of reprocessed wool or other filler between a layer of rayon fabric and a layer of cheesecloth, which are stitched together so as to contain the filler. The wool content,

if any, is in the middle layer. Respondents' quilted linings come from one source under a contract, by the terms of which respondents furnish the rayon facing to which the supplier attaches the filler and the cheesecloth backing. The contract usually calls for 4-ounce or 6-ounce quilting, which indicates the weight per running yard of material 41 inches wide,—more specifically, the weight of the filling material, exclusive of the weight of the cheesecloth backing and the rayon facing. There is no designation or specification in the contract as to the fiber content of the filling material, and in selling their leather coats and jackets respondents do not label the garments to show the wool fiber content of the interlinings. Two samples of respondents' quilted interlinings were tested; the filling material of one had a wool fiber content of 68.5%, and the other, 67.4%.

5. Under the Wool Products Labeling Act, respondents' interlinings are wool products and should be properly labeled, "wool product" being defined in §2(e) thereof as meaning:

any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

§4(a)(2) of said Act describes the manner in which a wool product shall be labeled. §4(d) of the Act provides:

This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

Rule 24(c) of the Rules and Regulations interprets §4(d) of the Act as follows:

In the case of garments which contain interlinings, the fiber content of such interlinings shall be set forth separately and distinctly as part of the required information on the stamp, tag, label, or other mark of identification of such garment. For purposes of this paragraph (c) the term "interlinings" shall not be construed as embracing paddings or stiffening ordinarily used in garments for structural purposes and not for warmth.

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In failing to label their quilted-interlined garments as to wool content of the interlining, respondents have failed to label their wool products as required, and have violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

6. The fur collars used on respondents' garments are referred to by them as "Mouton," which, they state, "has been a generally accepted trade term for 25 or 30 years." It is a processed lamb collar which has been dyed, and under Rule 9 of the Rules and Regulations promulgated under the Fur Products Labeling Act, should be designated "Dyed Mouton-processed Lamb." The only representation made by respondents as to the type of fur is in price lists used in 1956 and thereafter, which are primarily for salesmen, but are sent also to the wholesale and jobber trade. On these price lists the fur collars are uniformly designated as Mouton—frequently the letter "M," in place of the full word "Mouton," is used in style designations. Where used, the word "Mouton" is a wrongful designation of the fur product. On the labels which are attached to the garments there is no fur designation whatsoever, and no fur designation whatsoever was used on respondents' invoices or shipping memoranda.

7. "Fur product" as defined in §2(d) of the Fur Act means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

Interpreting this definition is Rule 39 of the Rules and Regulations, "Exempted Fur Products," which provides:

(a) Where the cost of any manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed five dollars (\$5.00), or where a manufacturer's selling price of a fur product does not exceed five dollars (\$5.00), and no express or implied representation is made concerning the fur contained in such product * * *, the fur product shall be exempt from the requirements of the Act and Regulations; * * *.

8. The cost of the fur collars which are used on respondents' leather jackets and coats does not exceed \$5.00 each; hence, if no express or implied representations were made concerning the fur contained therein, respondents would be exempt from the disclosure requirements of the Act and the Regulations. The only alternative to making no representations, under the Act and the Rules, is that the Act and the Rules thereunder be fully complied with.

9. Respondents' price lists (those for the years 1956, 1957, 1958

and 1959 are in the record as exhibits) depicted the various styles of garments offered by respondents. Also there were designated style numbers with a brief description and the price of each. Typical designations used in the price lists where fur collars were offered are:

A 22 QM * * * With a Genuine *Mouton Collar*;
907 M * * * with Genuine *Mouton Collar*;
904 QM * * * Genuine *Mouton Collar*.

No further information was contained in the price lists as to the character or type of fur used in the collars. Obviously the price lists were for advertising purposes, and by making reference therein to the *Mouton* collars, respondents made express representations concerning the fur contained in their garments, and made themselves subject to the Fur Act and the Regulations thereunder, which they have violated by not complying fully therewith.

CONCLUSIONS

1. The aforesaid acts and practices of respondents are in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, as charged.

2. Said acts and practices constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The Federal Trade Commission has jurisdiction over respondents and their acts and practices in this proceeding, which is in the public interest. Therefore,

It is ordered. That respondents Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the 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 garments containing woolen linings or other "wool products" as such products are defined in and subject to the said Wool Products Labeling Act, do forthwith cease and desist from:

A. 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:

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(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding five percentum of 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;

(b) The maximum percentage 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.

It is further ordered that Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, 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 sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur" and "fur product" as defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by failing to affix thereto labels showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of §4(2) of the Fur Products Labeling Act;

B. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur

Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

The hearing examiner found that respondents had violated the Wool Products Labeling Act and the Fur Products Labeling Act and designated rules and regulations promulgated under those statutes. Respondents have appealed from those findings and the order contained in the initial decision which would require the respondents, among other things, to affix labels to their garments supplying the information prescribed by such statutes.

Respondents manufacture and sell in commerce jackets and coats for men and boys which are made from horsehide and other leathers. Some of the garments have quilted interlinings containing woolen fiber. The collars used on some of the coats are composed of dyed lamb fur. It is undisputed that the labels attached to such articles have not included the information which those statutes direct be disclosed respecting products subject to them.

Under the Fur Products Labeling Act and rules, the dyed lamb fur used for the collars of some of such garments can be properly designated as dyed mouton-processed lamb. The garments' collars, however, are designated improperly in illustrated pricing brochures as "Genuine Mouton." The collars cost respondents approximately 35¢ each and the wholesale prices of the jacket line range from approximately \$8.00 upward. Rule 39(a)¹ of the aforementioned Rules and Regulations exempts fur products from the Act's requirements provided specified conditions are met. One category excluded is furs costing \$5.00 or less, exclusive of costs of incorporating them in the fur products; but one of the conditions imposed under the rule to qualify for the exemption is that no express or implied representation be made concerning fur contained in the product. Because statements and, in a few instances, pictorial representations concerning the fur have been included by the respondents in the

¹ "Where the cost of any manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed five dollars (\$5.00), or where a manufacturer's selling price of a fur product does not exceed five dollars (\$5.00), and no express or implied representation is made concerning the fur contained in such product * * *, the fur product shall be exempt from the requirements of the Act and Regulations * * *."

pricing brochure, their contention that such garments are excluded by that rule is wrong.

Nor are such articles excepted from the Act's requirements because respondents make no sales directly to consumers or because there is no record showing the brochures are intended for retailers' display to prospective consumers. The brochures containing the incorrect fur designation were for display by salesmen to the wholesale trade and to assist their explaining of price differentials among the coats resulting from collar and other variations. They were used and disseminated in commerce and clearly intended to promote and assist, directly and indirectly, in the sale by respondents of the products. The Act requires that the fur products covered by it be truthfully labeled and invoiced in the manner there prescribed. It is not controlling that the term "mouton" may be recognized in the garment trade as dyed and otherwise processed lamb fur.

The record, therefore, supports the determination that the respondents have misbranded their fur products by failing to attach labels showing the information required by Section 4(2)(a) and Section 4(2)(c) of the Act in the manner and form prescribed by the Rules and Regulations thereunder and have falsely and deceptively invoiced such products by failing to invoice them as required by Section 5(b)(1)(A) and 5(b)(1)(C) and in the manner and form prescribed by such rules; and the record additionally establishes, and we find, that the respondents, in violation of said Act and rules, have offered for sale and sold in commerce fur products which were falsely and deceptively advertised in commerce in that such advertisements did not show the information prescribed by Section 5(a)(1) and Section 5(a)(3) of said Act.

We next consider the exceptions by respondents to the initial decision's findings of violation of the Wool Products Labeling Act. The quilting or interlinings used for certain of the garments consist of three layers, namely, a layer of woolen or other fiber between a layer of rayon fabric and a layer of cheesecloth. These are stitched together, and any woolen content present forms the middle layer. The quilting comes from one supplier to whom respondents furnish the rayon facing fabric; and he attaches the cheesecloth and filler, the fiber content of such filler being at his option. Under Section 2(e) of the Wool Products Labeling Act, a wool product is defined as any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool or reused wool. Respondents' garments containing the woolen interlinings thus are wool products within the purview of that subsection.

However, another section of the Act, namely, Section 4(d),² states that the Act shall not be construed to require designations on garments as to the fiber content of their linings, paddings or other named components except, among others, those for which express or implied representations of fiber content are customarily made; and it also empowers the Commission to promulgate rules in reference to classes of articles concerning which such representations are customarily made. Rule 24(c) prescribes that the label for a wool garment product containing interlinings show their fiber content separately, but excludes those interlinings ordinarily used in garments for structural purposes and not for warmth.

The hearing examiner found that the interlinings were used for added warmth. Counsel supporting the complaint did not question the respondent testifying at the hearing as to his motives for using the quilted material. On the other hand, respondents introduced no testimony showing that their interlinings constituted paddings or stiffening materials used for structural purposes. The aforementioned witness when testifying did, however, display several of the garments to the hearing examiner and counsel. Although a sample of the quilting material was received, the exhibits of record include no garment for our inspection. That the facts pertinent to the warmth issue were inadequately developed is obvious, and we think that the record we are called on to review does not suffice for informed decision on that issue.

As we noted above, the dyed lamb fur used by respondents for the collars of the garments cost respondents approximately 35 cents each. Furthermore, the record indicates that the woolen quilting used in each garment costs only 20 cents. Finally, as previously noted, the wholesale prices of the jackets range around \$8.00. On an \$8.00 garment, even the most gullible could not expect much mouton, either dyed mouton-processed lamb or genuine mouton. However, there having been established by the record a clear violation with respect to the "Genuine Mouton" representation, we are sustaining the Hearing Examiner's decision finding a violation of the Fur Products Labeling Act.

² "This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

"The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content."

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In retrospect we feel that the length of time already expended on this somewhat picayunish matter is regrettable; to expend the additional time required to develop an adequate record with respect to the Wool Products Labeling Act aspect of the case involving woolen quilting costing some 20 cents per garment would be deplorable. While the Commission has the power to remand a case for the reception of such additional evidence as may be necessary to provide an adequate basis for decision on questions presented for review, such a procedure would be time consuming, would be an unconscionable waste of public funds, and likewise would be to a degree harrassing to parties respondent. Under all the circumstances we think that the public interest would not be served by remanding the case for further proceedings.

The hearing examiner's findings of violation of the Fur Products Labeling Act are approved but those to like effect respecting the Wool Products Labeling Act are rejected. The charges of the complaint in reference to the latter are, accordingly, being dismissed without prejudice to the Commission's right to reopen for further proceedings should future conditions warrant, or to take such further action as may be warranted by then existing circumstances. As so modified, the initial decision is being adopted as the decision of the Commission.

FINAL ORDER

This matter having come on for hearing upon the appeal by the respondents from the initial decision of the hearing examiner and the Commission, for reasons stated in the accompanying opinion, having granted the appeal in part and denied it in part:

It is ordered, That the findings as to the facts contained in the initial decision be, and they hereby are, modified (1) by striking the words "for added warmth" appearing in the first sentence of paragraph 4 thereof, (2) by striking from the first sentence of paragraph 5 thereof the words "and should be properly labeled, 'wool product' being" and (3) by substituting the following language in lieu of the last sentence contained in said paragraph 5:

"The facts pertinent to whether the quiltings or interlinings were for warmth rather than structural purposes were inadequately developed for the record. The record accordingly does not suffice for informed decision on whether the respondents have or have not violated the Wool Products Labeling Act."

It is further ordered, That paragraph 1 of the "Conclusions" contained in the initial decision be, and it hereby is, modified (1) by adding after the word "respondents" in the first line thereof the

words "as found in paragraphs 6 to 9, inclusive, above" and (2) by striking therefrom the words "the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and."

It is further ordered, That the following order be, and it hereby is, substituted in lieu of that contained in the initial decision:

"It is ordered, That Sam Goldman and Sol Goldman, individually and as copartners trading as Excelled Sheepskin & Leather Coat Co., or under any other name, 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 sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the manufacture, sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as 'commerce,' 'fur' and 'fur product' are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

"A. Misbranding fur products by failing to affix thereto labels showing in words and figures plainly legible all of the information required to be disclosed by each of the subsections of §4(2) of the Fur Products Labeling Act;

"B. Falsely or deceptively invoicing fur products by failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of §5(b)(1) of the Fur Products Labeling Act;

"C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale, of fur products, and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the Rules and Regulations;

(b) That the fur product contains or is composed of bleached, dyed or otherwise artificially colored fur, when such is the fact.

"It is further ordered, That the charges contained in paragraph 3 of the complaint be, and they hereby are, dismissed without prejudice."

It is further ordered, That the initial decision as herein modified be, and it hereby is, adopted as the decision of the Commission.

INDEPENDENT QUILTING CO., INC., ET AL.

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