

Decision

57 F.T.C.

IN THE MATTER OF

WILSON TRADING CORPORATION ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6656. Complaint, Oct. 17, 1956—Decision, Oct. 20, 1960*

Order requiring distributors of yarn in New York City to cease violating the Wool Products Labeling Act by representing as 100% cashmere, on invoices and carton labels, cones of yarn which contained substantially less than 100% cashmere fibers; and by failing to label certain of said wool products to show the percentages of the total fiber weight, as required.

Mr. Berryman Davis and Mr. H. D. Stringer for the Commission.
Rubinton & Coleman, by *Mr. Theodore D. Ostrow* and *Mr. Noel Rubinton*, of Brooklyn 1, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint herein charges the respondents, Wilson Trading Corporation, a corporation, and Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of the respondent corporation, (a) with violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, by misbranding certain wool products in a manner which constitutes unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and (b) with making false, misleading and deceptive representations on invoices of wool products (yarns), which had the capacity and tendency (1) to mislead and deceive a substantial portion of the purchasers of said products into the erroneous and mistaken belief that such statements were true; (2) to cause such purchasers to misbrand the fabrics manufactured with said yarn as to their fiber content; and (3) to place in the hands of such purchasers the means and instrumentalities whereby they might mislead and deceive members of the purchasing public as to the character and amount of the constituent fibers in said products, all of the latter practices being in violation of the Federal Trade Commission Act.

All respondents were duly served with the aforesaid complaint according to law and, within the required time, filed answer thereto denying the pertinent charges and violation. By amended answer filed May 16, 1957, respondents assert, without conceding any impropriety in their prior activity, that since May 7, 1956, they had not sold or delivered any of the yarn referred to in the complaint; that on June 20, 1956, the Commission was given written assurance

that respondents would sell their yarns as requested by "responsible officials of the Federal Trade Commission" with whom respondents had conferred; and that there was and is no reasonable likelihood that the activities alleged in the complaint will occur in the future.

On the issues thus joined the matter proceeded to trial during the course of which certain testimony was had and exhibits received in evidence, all of which testimony was stenographically reported and, together with the exhibits, duly filed of record in the Office of the Commission in Washington, D.C., as required by law.

Subsequent thereto, both parties were accorded an opportunity, of which they availed, of filing with the Hearing Examiner their respective Proposed Findings of Fact and Conclusions of Law, those deemed proper to be admitted having been incorporated herein, and those rejected being ignored, as a reading of this Initial Decision may indicate.

FINDINGS AS TO THE FACTS

1. Respondent Wilson Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 1440 Broadway, New York, New York. The individual respondents Jacob Bleetsstein and Norman Glauber, Jr., are president and secretary-treasurer, respectively, of said corporation, and formulate, direct, and control the acts, policies, and practices of said corporate respondent. Their address is the same as that of the corporate respondent.

2. Wilson Trading Corporation is a contract spinner of yarn, spinning yarns composed of a wide variety of fibers. It does not sell any of the yarn at retail but sells to manufacturers and, in the course and conduct of its business, was and is in competition, in commerce, with other corporations, firms and individuals in the sale of wool products, including yarns.

3. Subsequent to January 1, 1954, respondents introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein, consisting of cones of yarn.

4. The said cones of yarn were introduced into commerce, sold, transported, distributed, delivered for commerce and offered for sale in commerce, in containers on which there was set forth the label "imported cashmere yarn", which said phrase described the said yarn as containing 100% cashmere fibers.

5. In the course of conduct of their business, respondents stated on invoices in connection with their sales of said yarn "#5 run

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imported cashmere yarn in oil on cones", which said phrase described the said yarn as containing 100% cashmere fibers.

6. Approximately 18,000 pounds of the cones of yarn particularly involved in this proceeding were purchased by respondents from an importer who had procured them from Japan, where the constituent fibers had been spun into yarn and wound into the cones, which carried no labels showing the fiber content of the yarn. The only labels were attached to the cartons or boxes in which the cones of yarn were shipped.

7. Invoices from the importer to respondents dated January 20, 1956; February 15, 1956; March 2, 1956; April 3, 1956; and April 25, 1956, and a letter of August 1, 1955, confirming the sale, describe the yarns as 90% Cashmere, 10% wool, including hair 0.3%; or in some instances the invoices show

Composition:	Percent
Cashmere -----	90
Wool -----	10

In some instances the included hair is shown as 0.5% average. In a letter to the importer dated October 18, 1955, respondents acknowledged confirmation of an order for 5,000 pounds of "90-10 Cashmere yarn". The respondents had knowledge of the less-than-100% cashmere content of the yarn which they were procuring, and which later they sold and caused to be transported in commerce.

8. Despite these facts, respondents assert that the yarns which they sold and invoiced as cashmere were actually cashmere and not a mixture of cashmere and wool. To justify their position respondents relied on reports of tests made by the United States Testing Company to the effect that the many tests made by them showed that respondents' yarns contained from 97% to 100% cashmere.

9. Tests conducted by experts called in support of the allegations of the complaint, on the contrary, showed cashmere content of respondents' yarns to vary from 88% to 97%, some of the intermediate percentages being 89.5, 89.6, 89.9, 90, 91, 92.4 and 93.5. Despite the testimony that although there is no chemical or mechanical process by which cashmere and wool fibers can be separated and that the separation must be made visually under magnification, the end result should not vary more than one or two percent.

10. The determination of the issue as to the content of respondents' yarns requires evaluation of the testing processes and the qualifications of those conducting the tests, who testified to their opinions as experts in this field. On the basis of all the evidence, after evaluating and weighing the qualifications and experience of the

expert witnesses, the manner in which they chose the samples to be tested, the care with which the tests were conducted and the apparent freedom of these witnesses from bias and prejudice, the conclusion is reached that the greater reliance must be placed upon the results of tests made by the experts called by the Commission, rather than on those tests conducted for respondents. Weight must also be given to the manner in which the yarns were labeled and invoiced by the manufacturer who sold to respondents; to the language used by respondents in placing orders; and the language used by the importer in confirmation of orders.

11. Among and as examples of said misbranded wool products are containers of yarn which were not stamped, tagged or labeled so as to show the percentages of the total fiber weight thereof as required by the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder.

12. By their statements on invoices representing that their yarns were "cashmere", respondents represented falsely that their products were 100% cashmere. Such statements had the capacity and tendency to mislead and deceive a substantial portion of the purchasers of their products into the erroneous and mistaken belief that such statement was true; to cause such purchasers to misbrand the fabrics manufactured with said yarn as to their fiber content; to place in the hands of such purchasers the means and instrumentalities whereby they may mislead and deceive members of the purchasing public as to the character and amount of the constituent fibers in said products; and, as a result thereof, unfairly to divert trade in commerce to respondents from their competitors.

CONCLUSIONS

1. The acts and practices engaged in by respondents in the mislabeling and non-labeling of their products, as hereinabove found, constituted misbranding of wool products and were in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

2. The acts and practices of the respondents in making false representations on their invoices and elsewhere were and are to the prejudice and injury of the public and of respondents' 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.

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3. The Federal Trade Commission has jurisdiction of the subject-matter and persons named herein, and this proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Wilson Trading Corporation, a corporation, and its officers, Jacob Bleetstein and Norman Glauber, Jr., 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 yarns or any 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 "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 included therein;

2. Failing securely to 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 products, 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;

(b) the maximum percentages of the total weight of such wool products of any non-fibrous loading, filling or adulterating matter;

(c) the name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool products 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 Wilson Trading Corporation, a corporation, and its officers, Jacob Bleetstein and Norman Glauber, Jr., 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 yarn or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting by statements or representations in contracts, orders, confirmations, invoices, or other documents, by correspondence, orally, or by any other means the character or amount of the constituent fiber content of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter having been heard by the Commission on the respondents' appeal from the hearing examiner's initial decision; and

The Commission having considered the entire record, including the briefs and oral arguments of counsel for respondents and counsel in support of the complaint, and having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respects to dispose of this matter:

It is ordered, That respondents' appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed March 21, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Wilson Trading Corporation, a corporation, Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of said corporation, 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

PREMIER KNITTING CO., INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE

FEDERAL TRADE COMMISSION ACT