

ALPINE QUILTING COMPANY, INC., ET AL.

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

Docket 7619. Complaint, Oct. 22, 1959—Decision, Nov. 28, 1960

Order requiring New York City manufacturers to cease violating the Wool
Products Labeling Act by labeling as "100% Reprocessed Wool", "80%

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Decision

Reused Wool, 20% other Unknown Fibers", and 70% Reprocessed Wool, 30% Man-Made Fibers", interlining materials which contained substantially less reprocessed or reused wool than the percentages thus set out; and by failing to label certain of such wool products as required.

Ames W. Williams, Esq., supporting the complaint.

Alex. Akerman, Jr., Esq., of *Shipley, Akerman & Pickett* of Washington, D.C., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

PRELIMINARY STATEMENT

The complaint issued in these proceedings on October 22, 1959, charges respondents with violating the Federal Trade Commission Act, the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, by falsely and deceptively labeling and tagging their wool products sold in interstate commerce, with respect to the character and amount of the constituent fibers contained therein. Answer was filed November 25, 1959. By motion filed December 16, 1959, and renewed January 12, 1960, respondents requested that the Commission stay this proceeding for the purpose of permitting respondents to enter into a voluntary agreement to cease and desist from the practices alleged to be unlawful. Such motion was denied by the Commission by order issued January 27, 1960.

On January 7, 1960, counsel signed a stipulation of facts to be considered by the Hearing Examiner in deciding the issues involved in this proceeding. The stipulation provided that the individual responsibility of respondent Harry Haberman "is subject to further proceeding." Those "further proceedings" took place on April 26, 1960, in New York, New York, at a hearing at which respondent Harry Haberman testified. Counsel for all of the parties reaffirmed in the record on April 26, 1960, that the stipulation of January 7, 1960, was and is in full force and is to be considered by the Hearing Examiner in adjudicating this case. This initial decision is based upon the facts so stipulated, and the facts adduced at the hearing on April 26, 1960.

The parties also agreed that the Commission's decision in Docket 7401, *Hunter Mills Corporation*, should be dispositive of respondents' challenge of the efficacy of the laboratory tests performed upon the material allegedly improperly labelled. On February 17, 1960, the Commission's decision in *Hunter Mills* validated such tests.

The record made at the hearing in New York, N.Y., on April 26, 1960, adduced sufficient facts to dispose adequately of Harry Haber-

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man's contention that he should not be held personally responsible.

Proposed findings, conclusions, and suggested orders were filed by all parties on May 27, 1960.

The Hearing Examiner finds that counsel supporting the complaint has proven the legally essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record, and an order is herein entered granting to counsel supporting the complaint the relief which he has requested.

Findings requested by counsel which are not specifically adopted and incorporated herein are rejected and refused. The fact that the Examiner has not incorporated in this initial decision, nor rejected, nor dismissed specifically, evidence which is in the record, should not be construed as indicating that such evidence has not been fully considered by the Examiner in preparing this initial decision. It indicates merely that the evidence which the Examiner has specifically incorporated in his findings of fact is sufficiently preponderant, reliable, probative and substantive for a proper adjudication of the issues presented by the record in this proceeding.

FINDINGS OF FACT

Respondent, Alpine Quilting Company, Inc., is a corporation which was organized in 1953. It is existing and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 470 West 128th Street, New York, New York.

Individual respondent Harry Haberman is president and treasurer of Alpine Quilting Company, Inc. He owns 100 per cent of its stock; is its chief executive officer; makes all its policies, and is dependent upon his salary from Alpine for his livelihood. Haberman is not otherwise employed; and has been in the textile industry most of his productive life. The office and principal place of business of the individual respondent, Haberman, is the same as that of the corporate respondent, Alpine Quilting Corporation.

Harry Haberman controls the acts, practices and policies of the corporate respondent.

Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January, 1957, respondents have manufactured for introduction into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Act, quilted interlining materials, made in whole or in part of reprocessed wool or reused wool, which are wool products, as "wool products" are defined therein. Respondents' gross sales amount to about \$200,000 per

year. Approximately half of this volume consists of quilted woolen interlining material.

Federal Trade Commission investigators obtained representative samples of quilted woolen interlining materials sold by respondents to two different customers. For the purpose of this stipulation, these samples were designated samples A and B.

Sample A was taken from interlining materials sold by respondent Alpine Quilting Company, Inc., to Lehigh Trouser Co., Wilkes Barre, Pennsylvania, by invoice dated July 3, 1957, respondents' Order No. 2500. The shipment from which Sample A was taken consisted of pieces of interlining materials totalling 1729 yards. The aforesaid invoice, sent by the respondent corporation from its place of business in the State of New York, to Lehigh Trouser Co. in the State of Pennsylvania, represents the interlining materials as being "100 per cent Reprocessed Wool." The pieces of said interlining materials, including the piece from which Sample A was taken, were all labeled as "100 per cent Reprocessed Wool." This sample was tested in the Federal Trade Commission screening laboratory by Marjorie A. Molloy, who is qualified, both by training and by experience, to conduct such tests. The manner in which the test was performed is set out below. The test showed that Sample A contained 92.8 per cent wool, 1.3 per cent acetate, and 5.9 per cent other fibers.

Sample B was taken from interlining materials sold by respondent corporation to Timely Togs, Inc., 715 Broadway, New York, New York, by invoice dated October 2, 1958, respondents' Order No. 2809-2818. Timely Togs, Inc., purchaser of Sample B, does approximately 70 per cent of its wool products business in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939. The aforesaid interlining had been labeled and invoiced by respondent Alpine as 80 per cent Reused Wool, 20 per cent Other Unknown Fibers. A sample was tested, also by Marjorie A. Molloy, named above, and this sample was found, according to such test, to contain 64.1 per cent wool, 3.0 per cent acetate, and 32.9 per cent other fibers.

In the course and conduct of their business, respondents have been and are now in substantial competition with corporations, firms and individuals similarly engaged in the business of selling wool products, including interlining materials, in commerce.

The tests, for wool fiber content of the Samples A and B referred to above, were conducted in accordance with standard procedures, as follows:

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The total weight of the samples was 3 to 4 grams. The total sample was drawn from several areas chosen at random. After the covering fabric (and the threads holding it) were removed, the sample was soaked in carbon tetrachloride for at least a half hour, with frequent stirring. Any oils or grease would be dissolved at this step. Then the sample was placed in a beaker of boiling water, and was boiled for five minutes. This boiling removed any dirt present, and also made certain that all the carbon tetrachloride was gone. Then the sample was rinsed several times, and placed in the oven to dry.

After it had dried, the sample was removed from the oven, divided into two parts, and each half was placed in a weighing bottle, and a first weighing was made. These bottles were put back in the oven for several hours, then removed and placed in a dessicator until cool, and weighed again. This process was repeated until a constant weight was obtained, showing that all the moisture has been removed. (The oven temperature is kept at 100° Centigrade.) This final weight is entered on the data sheet as "weight of sample minus carbon tetrachloride."

After this constant weight has been obtained, the samples are extracted with acetone for 45 minutes, in order to remove any acetate fibers present. (This step also removes Vinyon and Dynel if they are present, but it is unlikely that they ever would be.) After the extraction, the sample is rinsed repeatedly in order to remove all the acetone; is placed in the weighing bottle again and put back into the oven. A constant weight is again obtained before proceeding any further. The loss in weight after this step is the amount of acetate present.

The final step is one which removes all the wool (and any other animal fiber) from the sample. It is boiled for five minutes in a 5 per cent solution of sodium hydroxide, after which the residue, if any, is rinsed thoroughly, dried (to constant weight), and weighed. After this last weight is obtained, the residue is examined microscopically to determine its contents and also to make sure that all the wool has been removed. It has never been found that the wool was not all removed by this treatment.

The rinsing procedures used were as follows: After the first step—the cleaning of the sample—the total mass of the fibers were held in the hand during the final rinsings. After the sample was weighed for the first time, it was not handled again. The latter rinsings were done with the sample in a porous crucible, after which the sample was returned to the bottle with the aid of a glass rod.

The rinsing procedure used for the samples in this case, after the first step, was the same procedure which was used in the matter of

Hunter Mills Corporation, et al., Docket No. 7401. It is subject to the same arguments as were urged in *Hunter Mills*. The Federal Trade Commission's opinion dated February 17, 1960, in *Hunter Mills* specifically approved the procedures used in this case for testing the wool content of the samples.

The Hearing Examiner finds that respondents, after January, 1957, manufactured for introduction 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 defined in said act.

Certain of respondents wool products were misbranded within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled, or tagged, with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products were interlining materials labeled or tagged by respondents as consisting "of 100 per cent Reprocessed Wool," 80 per cent Reused Wool, 20 per cent Other Unknown Fibers and "70 per cent Reprocessed Wool, 30 per cent Man-Made Fibers," whereas in truth and in fact the interlining materials to which said tags or labels were attached contained substantially less reprocessed or reused wool than the percentage set out on said tags or labels.

Certain of respondents' wool products sold in interstate commerce are hereby found to have been misbranded by respondent in that they were not stamped, tagged or labeled as required under the provision of Section 4(a)(2) of the Wool Products Labeling Act of 1939, and in the manner and form as proscribed by the Rules and Regulations promulgated under said act.

The Federal Trade Commission has jurisdiction over the respondents, and over the subject matter of this proceeding.

DISCUSSION

There is no controversy over the legally operative facts in this proceeding. Those facts which would determine whether a cease and desist order should be issued are stipulated, with the sole exception of the question of whether the testing procedure used on the samples was and is dependable.

This Commission's decision in the *Hunter Mills* case, Docket 7401, disposes of all of the legal issues which have been raised in the instant proceeding. Moreover, the same firm of attorneys who represented the respondents in the *Hunter Mills* case represents the re-

spondents in the instant proceeding, and have attempted to reassert legal defenses which were and are definitely disposed by the Commission's opinion in *Hunter Mills*. In *Hunter Mills* the Commission found that the test procedure for ascertaining a fiber content, which is the same procedure used in this proceeding, did not result in a loss of fiber from the materials being tested and render unreliable the fiber content findings. It held (p. 3):

The Commission sees little merit in this contention. The witness performing these tests, a graduate chemist with some nine years' experience, clearly demonstrated her familiarity with the various fiber identification tests, including the standard "boil-out" test used here. She testified that she has performed this same type of test some 700 to 800 times and that she clearly recognized the necessity for careful handling of the materials to be tested. She readily admitted the possibility of a loss of some of the shorter fibers in the cleansing and preparation of materials if the materials are carelessly handled, but had no doubt that as handled by her the loss would be insignificant. Nor was this contradicted by the witness Masterson who, while he testified that materials to be tested are not hand-rinsed in his organization, agreed that if the rinsing were carefully done there would be "very, very little loss" of fibers. In the circumstances, the Commission is satisfied that any small loss of fibers which may have occurred here cannot reasonably account for the presence in these samples of fibers other than wool ranging up to 18 percent of the total fiber weight. Nor can the possible presence of "ornamentation," account for other fibers in such amounts. Section 4(a)(2)(A) of the statute provides for exclusion of "ornamentation" from the statement of fiber contents only when it does not exceed 5 percent of the total fiber weight of the product, and Rule 16 of the Rules and Regulations promulgated under the Act expressly requires disclosure of the percentage of fibers in the ornamentation when it exceeds the 5 percent limit.

Moreover, counsel in *Hunter Mills*, as in this case, sought to exempt the individual respondents in *Hunter Mills*, William Trakinski and Simon Trakinski, from the prohibition of the cease and desist order in that case. In this case, as in *Hunter Mills*, the individual respondent is the sole stockholder and "there are no other stockholders, officers, or directing officials." "The individual respondent(s) are not only officers of the corporation—they are the corporation—engaged in the daily performance of the most intimate details of its operation; and in such a situation the necessity for joining them individually in the order to cease and desist is obvious." *Hunter Mills* Decision, pp 4, 5.

And as the Commission took pains to point out in *Hunter Mills*, Section 9 of the Federal Trade Commission Act does not provide any basis for arguing that the order in this case should not run against the individual sole stockholder and chief executive officer, Harry Haberman. "The statute does not immunize a witness from a cease and desist order, which is prospective only and has been

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aptly described as 'purely remedial and preventive.' *Chamber of Commerce of Minneapolis v. Federal Trade Commission*, 13 F. 2d 673, 685 (8th Cir. 1926). * * * One is not prosecuted by being told to desist from illegal conduct, nor does he thereby suffer the imposition of a penalty or the forfeiture of any legally-protected right or property." (*Carl Drath, trading as Broadway Gift Company v. Federal Trade Commission*, 239 F. 2d 452, 454 (D.C. Cir. 1956).)

It would serve no useful purpose to labor the points which were argued at length in the *Hunter Mills* case, particularly since counsel for the respondents in that case is the same counsel who represents the respondents in this case.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Counsel supporting the complaint has proven the legally essential allegations of the complaint by a preponderance of reliable, probative and substantial evidence in the record.

3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act.

4. The complaint filed herein states a good cause of action and this proceeding is in the public interest.

5. The acts and practices of the respondents which have been proven in this record violated the Wool Products Labeling Act of 1939, 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.

6. The use by respondents of false, misleading and deceptive statements and representations on invoices, with respect to the wool content of interlining materials had and now has the tendency and capacity to deceive clothing manufacturers, and others, purchasing same and relying on respondent's statement as to fiber content.

7. The acts and practices of respondents as found above were and are to the prejudice and injury of the public and of the respondents' competitors 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 and the Wool Products Labeling Act of 1939. Now, therefore,

ORDER

It is ordered, That respondents Alpine Quilting Company, Inc., a corporation, and its officers, and Harry Haberman, individually

and as an officer 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 woolen stocks, or other wool products, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely or deceptively tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to affix labels to wool 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 Alpine Quilting Company, Inc., a corporation, and its officers, and Harry Haberman, individually and as an officer 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 woolen stocks, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting the character or amount of the constituent fibers contained in such products on invoices or shipping memoranda applicable thereto or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

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

It appearing that the contentions made by respondents on said appeal are that the decision is not supported by substantial evidence, that in the absence of evidence showing numerous instances of misbranding the provision of the order to cease and desist in said decision requiring disclosure of all information prescribed by Section 4(a)(2) of the Wool Products Labeling Act is too broad in scope, and that the order to cease and desist should not include respondent Harry Haberman in his individual capacity; and

The Commission having determined that the stipulation between counsel concerning the label and invoicing of two representative samples of respondents' products constitutes proof of substantial violations of the Wool Products Labeling Act and the Federal Trade Commission Act, as found by the hearing examiner, and that

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the order contained in the initial decision properly prohibits such violations; and

The Commission having further determined that Harry Haberman as the sole stockholder and the only active officer of Alpine Quilting Company, Inc., is responsible for the activities of that corporation and that the order to cease and desist to be fully effective should include this respondent in his individual capacity as well as in his capacity as an officer of the corporation:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed June 9, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Alpine Quilting Company, Inc., and Harry Haberman, 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 contained in said initial decision.

Commissioner Mills not participating for the reason that he did not hear oral argument herein.