

Complaint

IN THE MATTER OF

BGS SHOE CORPORATION ET AL.

CONSENT ORDER ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-117. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962*

Consent order requiring manufacturers of ladies' shoes and slippers in Manchester, N.H., to cease representing falsely in advertisements in trade publications and on their shoe boxes—by such wording as “. . . DEERSKIN casuals . . .” and “. . . fabulous DEERTAN casuals . . .”—that their shoes were made from leather produced from deer hides.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, The Federal Trade Commission, having reason to believe that BGS Shoe Corporation, a corporation, and Eli A. Cohen, William Lubell, Peter S. Freedman, and Arnold J. Cohen, individually and as officers of BGS Shoe Corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent BGS Shoe Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Hampshire with its principal office and place of business located at Millyard at Stark Street, Manchester, N.H. Individual respondents Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of ladies' shoes and slippers to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said ladies' shoes and slippers, when sold, to be shipped from their place of business in the State of New Hampshire to the purchasers thereof located in other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said shoes and slippers in commerce, as “commerce” is defined in

the Federal Trade Commission Act. The volume of business done by respondents in said shoes and slippers in commerce is now, and has been, substantial.

PAR. 4. Respondents in the course and conduct of their business have been, and are, engaged in substantial competition in commerce, with corporations, firms and individuals engaged in the sale and distribution of ladies' shoes and slippers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of ladies' shoes, respondents have advertised in trade publications, and on their shoe boxes. Among and typical, but not all inclusive, of the statements appearing in said advertisements are the following:

DEER TAN

A complete family of fabulous DEERSKIN casuals in the popular priced field.

Another sensational show stopper: fabulous DEERTAN* casuals in the popular price field

(At the bottom of the page in small print the following appears:

*A soft supple tannage of fine quality, top-grained cowhide)

PAR. 6. By and through the use of the aforesaid statements respondents represented, and now represent, that their ladies' shoes are made from leather produced from deer hides.

PAR. 7. In truth and in fact the said ladies' shoe are made from a leather material other than the hide of a deer.

PAR. 8. Respondents by means of the aforesaid acts and practices have furnished to others the means and instrumentalities of deceiving the public as to the composition of said shoes.

PAR. 9. The aforesaid acts and practices of the respondents have the capacity and tendency to confuse the public as to the composition of their shoes and to mislead the public into the erroneous and mistaken belief that the shoes are produced from deer hides and into the purchase thereof by reason of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation

of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent BGS Shoe Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at Millyard at Stark Street, in the city of Manchester, State of New Hampshire.

Respondents Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen are officers of said corporation, and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents BGS Shoe Corporation, a corporation, and its officers, and Eli A. Cohen, William Lubell, Peter S. Freedman and Arnold J. Cohen, 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 shoes or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words DEERSKIN, DEERTAN, DEER TAN, or any other word or words of similar import or meaning, to designate or describe products which are not in fact made from the hides of deer; or otherwise misrepresenting in any manner the composition of any of their products.

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2. Furnishing to others any means or instrumentalities by or through which the public may be misled with respect to any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents herein 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 this order.

IN THE MATTER OF

BERDAV, INC., ET AL.

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

Docket C-118. Complaint, Apr. 16, 1962—Decision, Apr. 16, 1962

Consent order requiring New York City distributors of wool products to cease violating the Wool Products Labeling Act by labeling "Made in England", woolen fabrics which were made in Japan; representing falsely that they had a place of business in London through use on labels of the name "London" and an emblem resembling the Royal Arms of the British Empire in conjunction with their corporate name; and labeling certain fabrics "Mohair and Wool" without setting forth the percentages of such fibers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by the said Acts, the Federal Trade Commission, having reason to believe that Berdav, Inc., a corporation, and Kenneth Rivlin and Shirley Rivlin, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Berdav, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Individual respondents Kenneth Rivlin and Shirley Rivlin are President and Secretary, respectively, of the corporate respondent. Said individual respondents, cooperate in formulating, directing and controlling the acts, policies and practices of the

said corporate respondent, including the acts and practices herein-after referred to. All respondents have their offices and principal place of business at 238 Fourth Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since 1948, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale, in commerce, wool products, as the terms "commerce" and "wool product" are defined in the said Act.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively labeled or tagged with respect to the country of manufacture.

Among such misbranded wool products, but not limited thereto, were fabrics labeled "Made in England", whereas in truth and in fact, said woolen fabrics were made in Japan.

PAR. 4. Certain of said wool products were further misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were tagged or labeled with tags which represented, directly or by implication, that the respondents owned, operated or controlled a place of business in London, England, whereas in truth and in fact, respondents do not own, operate or control a place of business in London, England.

Among such misbranded wool products, but not limited thereto, were fabrics with labels on which the name "London" appeared in conjunction with the name of corporate respondent Berdav, Inc. together with the depiction of an emblem which resembles the Royal Arms of the British Empire.

PAR. 5. Certain of said wool products were further misbranded by respondents in that they were stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were fabrics with labels which set forth the fiber content of such fabrics as "Mohair and Wool" without setting forth the percentages of such fibers.

PAR. 6. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that labels attached to the wool products represented

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the fiber content of such products as "Mohair and Wool" without setting forth the actual percentage of mohair contained therein, in violation of Rule 19 of the aforesaid Rules and Regulations.

PAR. 7. The acts and practices of 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.

PAR. 8. Respondents are now, and for some time last past, have been engaged in the offering for sale, sale and distribution of certain products, namely woolen fabrics, to tailors and suit manufacturers who in turn manufacture the fabrics into suits and sell the same to the public.

PAR. 9. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the country of manufacture of certain of their said products. Among such misrepresentations, but not limited thereto, were statements representing woolen fabrics as having been "Made in England" where as in truth and in fact, the said woolen fabrics were made in Japan.

PAR. 11. There is a preference among a substantial number of the American purchasing public for woolen fabrics manufactured in England over those manufactured in Japan.

PAR. 12. By and through the use of the aforesaid misrepresentations on invoices to their customers, respondents placed in the hands of others the means and instrumentalities by and through which they may mislead and deceive the public as to the origin of their woolen fabrics.

PAR. 13. In the course and conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of woolen fabrics of the same general kind and nature as that sold by respondents.

PAR. 14. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices as aforesaid, has had, and now has, the capacity and tendency to mislead respondents' customers and members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of the respondents' products by reason of such erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Berdavi, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 238 Fourth Avenue, in the city of New York, State of New York.

Respondents Kenneth Rivlin and Shirley Rivlin are officers of

said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Berdav, Inc., a corporation, and its officers, and Kenneth Rivlin and Shirley Rivlin, 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 into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment, or shipment in commerce, of wool products, as the terms "commerce" and "wool products" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the country of manufacture.

2. Falsely or deceptively, stamping, tagging, labeling or otherwise identifying such products so as to represent in any manner, directly or by implication, contrary to fact, that respondents own, operate or control a place of business in London, England, or any other place.

3. Failing to affix stamps, tags or 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.

4. Stamping, tagging, labeling or otherwise identifying such products as containing "mohair" without setting forth the actual percentage of the mohair contained therein.

It is further ordered, That the respondents Berdav, Inc., a corporation, and its officers, and Kenneth Rivlin and Shirley Rivlin, 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 fabrics or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting the country of manufacture of such products on invoices, shipping memoranda or in any other manner.

B. Furnishing means and instrumentalities to others by and through which they may mislead the public as to the country of origin of such products.

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It is further ordered, That the respondents herein 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 the respondents have complied with this order.