

within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF
ALLENTON MILLS, INC., ET AL.

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

Docket 8451. Complaint, Nov. 9, 1961—Decision, May 24, 1962

Order requiring three affiliated family corporations and their officers to cease violating the Wool Products Labeling Act by such practices as labeling as "All wool", fabrics which contained 50% or 25% reprocessed wool, and by failing in other respects to comply with labeling requirements.

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 said Acts, the Federal Trade Commission, having reason to believe that Allenton Mills, Inc., Scots Mills, Inc., and Maine Mills, Inc., corporations, and Benjamin Furman, Fanny

Furman and Max Furman, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling 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. Respondents Allenton Mills, Inc., and Maine Mills, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Rhode Island with their principal place of business in Allenton, R.I. Respondent Scots Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its principal place of business in Uxbridge, Mass. Individual respondents Benjamin Furman, Fanny Furman and Max Furman are officers of the corporate respondents. Said individual respondents cooperate in formulating, directing and controlling the acts, policies and practices of the corporate respondents including the acts and practices hereinafter referred to. The addresses of the individual respondents are the same as that of Allenton Mills, Inc., and Maine Mills, Inc.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since approximately the two years last past, 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.

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 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 certain interlining materials labeled or tagged by respondents as "100% wool" or "All Wool" whereas, in truth and in fact, said products contained a substantial quantity of reprocessed or reused wool.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products

Labeling Act 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 certain interlining materials with labels which failed: (1) to disclose reprocessed wool or reused wool present, and (2) to disclose the percentage of such reprocessed wool or reused wool.

PAR. 5. 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.

Mr. Edward B. Finch, supporting the complaint.

Mr. Sydney Silverstein, Higgins & Silverstein, of Woonsocket, R.I., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

This is a proceeding brought against several family corporations and the members of the family controlling them for alleged violation of the labeling provisions of the Wool Products Labeling Act.

The principal question presented is whether the test for reused or reprocessed wool is adequate to support a finding of mislabeling where the label on wool interlinings reads "all wool", and credible expert testimony adduced by the Commission described a test method which disclosed the presence of substantial amounts of reprocessed wool. Also at issue is the propriety of issuing an order against several corporations controlled by the same family on the proof presented.

The Pleadings

By its complaint issued November 9, 1961, the Commission alleged that respondents, one Maine and two Rhode Island corporations and three officers common to each, who direct their activities, engaged in commerce as defined in the Wool Products Labeling Act. It was further charged that respondents misbranded certain interlining materials by labeling them "all wool"; whereas, "in truth and in fact, said products contained a substantial quantity of reprocessed or reused wool". General charges of mislabeling and failure to label were also made.

Answering November 29, 1961, respondents admitted the formal facts concerning their corporate status and the responsibility of the individual respondents. They also admitted that they are engaged

in commerce. They denied the allegations of the complaint charging violations.

Pre-Hearing Procedures

Pre-hearing procedures were commenced by issuance of an order dated November 17, 1961 for a conference December 15, 1961. This conference was postponed at the request of respondents' counsel until December 28, 1961.

At the pre-hearing conference, counsel supporting the complaint submitted a pre-hearing memorandum, under Rule 4.8, at the hearing examiner's request. This set forth counsel's position on each of the subparagraphs of that rule on which he desired to take a position, and it formed the basis for a demand to admit. Excellent cooperation was given by counsel for both parties at the pre-hearing conference, and a summary of the matters agreed upon is included in Pre-Hearing Order No. 1 dated December 29, 1961.

Thereafter, in accordance with Pre-Hearing Order No. 1, counsel for respondents notified counsel supporting the complaint that he would not admit the facts concerning which an admission was sought. Depositions were then taken of three of the four persons from whom attorneys for the Commission had secured samples of respondents' interlining materials. These depositions later were stipulated into the record at the initial hearing as exhibits, neither party pressing objection to any of the questions asked or answers given, and the samples identified were received in evidence at the same hearing.

The Record

The initial hearing was held on January 15, 1962, the date set by the complaint, in Boston, Massachusetts, a place found reasonably convenient for all parties and witnesses.

Respondents commenced their case (pursuant to the revised rules of the Commission) immediately following the close of the Commission's case.

Proposed findings, conclusions and briefs were submitted March 5, 1962 and counterproposals March 12, 1962.

On the basis of the entire record and in reliance upon his observation of the demeanor of the witnesses who appeared before the hearing examiner, the following findings of fact and conclusions therefrom are made. All proposed findings of fact and conclusions not expressly found, either in terms or in substance, are denied as erroneous or immaterial.

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FINDINGS OF FACT

1. The following respondent corporations are incorporated in the State or Commonwealth and have their principal office and place of business as set forth opposite their respective names:

Name	State or Commonwealth	Principal Office
ALLENTON MILLS, INC.....	Rhode Island.....	Allenton, R.I.
MAINE MILLS, INC.....	Rhode Island.....	Allenton, R.I.
SCOTS MILLS, INC.....	Massachusetts.....	Uxbridge, Mass.

2. The individual respondents, Benjamin Furman, Fanny Furman and Max Furman, are officers of each of the corporate respondents, and they cooperate with each other in formulating, directing and controlling the acts, policies and practices of the corporate respondents, including the acts and practices hereinafter referred to. The addresses of the individual respondents are at the principal offices of Allenton Mills, Inc., and Maine Mills, Inc.

3. Benjamin Furman and Max Furman are partners in a concern known as Ace Woolens which is not named a respondent as a separate business entity. As such partners, Benjamin Furman and Max Furman purchase the raw materials for the woolen mills operated by Allenton Mills, Inc., and Scots Mills, Inc. Fanny Furman is the wife of Max Furman and the mother of Benjamin Furman. All three individual respondents are directors of each of the corporate respondents. Max Furman, as the father of the family, is regarded as the head of the family group, but all individual respondents participate in the activities.

4. Pine State Mills, also a non-respondent, is a sales organization which has an office at 450 Seventh Avenue, New York, N.Y. It is controlled by Max Furman and Benjamin Furman, and its name is used on the order blanks reflecting sales made by the corporate respondents.

5. The corporate respondents, together with Ace Woolens and Pine State Mills, are all operated as a single family enterprise of the individual respondents. Raw material, or stock, as it is called in the trade, is purchased by Ace Woolens; this, in general, goes to Scots Mills, Inc., where it is opened by picking machines. Some of this partly-processed raw material goes to Allenton Mills, Inc., for further processing and weaving, and some remains at Scots Mills, Inc. Maine Mills, Inc., has at present no weaving facilities of its own. It was previously engaged in the manufacture of wool blankets, and its name is used on fabrics produced by either Scots Mills, Inc., or Allen-

ton Mills, Inc. The three names, in fact, are used interchangeably regardless of what mill actually weaves the fabric. However, a product which is to be factored by Textile Banking Corporation is invoiced under the name Allenton Mills, Inc., and the names Scots Mills, Inc., and Maine Mills, Inc., are used on invoices where the product is to be factored by Rusch & Co., no matter which mill weaves the fabric. When invoices are made by one corporate respondent, as a matter of bookkeeping, no other corporate respondent is credited with an interest in the proceeds. The factoring concerns, in factoring, purchase without recourse, the receivables resulting from the sales made by corporate respondents after retaining a fee or commission for their services. The samples of fabric produced here were each invoiced by Allenton Mills, Inc., and the labels showing fiber content bore the name Maine Mills, Inc.

6. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and particularly during the last two years, 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.

7. Certain of said wool products were misbranded by respondents 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, as hereinafter more fully set forth.

8. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated under said Act, as hereinafter more fully set forth.

9. During a routine investigation in the spring of 1961, Robert Scott of the Federal Trade Commission called upon respondents and was informed by Max Furman that respondents did not keep adequate records from which the constituent fibers of their interlining products could be established because it was too expensive to do so.

10. At about the same time, Frederick Nash of the Federal Trade Commission secured samples of cloth from the following persons: Samuel Benjamin, 17 East Broadway, New York, New York; Samuel Levy, President of Big Three Textile Corporation at 256 West 38th Street, New York, New York, and from Joseph Klein, President of Makel Textile Company, 225 West 37th Street, New York, New York.

These persons later testified on deposition that the cloth from which samples were taken had been purchased from one of respondent corporations. Each of said samples was cut from a bolt which had been in its original wrapping by Nash and the purchaser acting together. The tag on the bolt was transferred to the sample; then the sample with the tag and a copy of the invoice from the respondent corporation were placed by Nash in the hands of Robert Scott, his superior. Nash first replaced the original label with one in his handwriting showing where he got the cloth and the piece number.

11. About the same time, Frederick Nash secured a similar sample from Bernard Tannenbaum, another purchaser of cloth whose testimony could not be secured on deposition. Said sample was obtained and treated in the same manner as the samples obtained from the other purchasers. Respondents produced a copy of an invoice and shipping memorandum which contains a lot number identical with the lot number on the tag attached to the bolt and transferred to the sample, as well as Tannenbaum's firm name. The sample, moreover, bears a tag which appears identical to tags on fabrics identified as stated in Finding No. 10. Accordingly, the hearing examiner infers that said sample, tag and invoice secured by Frederick Nash from Tannenbaum originated from respondents.

12. Following the receipt of said samples from Frederick Nash, Robert Scott placed a label in his handwriting containing the file number and the piece number opposite the label affixed by Nash on each sample, separated the cloth between the labels and forwarded the pieces of the samples containing the label in his handwriting to Dr. Samuel J. Golub by mail, together with a covering letter requesting that Dr. Golub test the fabric for fiber content under the Wool Products Labeling Act.

13. There was no indication placed on the samples forwarded to Dr. Golub by which he was informed of the names of the persons by whom the fabric was manufactured. He placed his own tag on each fabric sample when tested with a number corresponding to the report number of the results obtained.

14. Dr. Golub tested the samples submitted to him with chemical and microscopic tests. The chemical tests determined quantitatively the character of fibers, i.e., wool, nylon, acrylic, etc. The microscopic test determined qualitatively but not quantitatively the presence and approximate amount of reprocessed wool.

15. The chemical tests performed are well-recognized and determined the character of the fibers by successively dissolving out fibers with chemicals. By carefully weighing the entire sample—then the

sample minus each of the dissolved fibers—the precise weight of each of the fibers was obtained and its percentage of the weight of the entire sample calculated.

16. The microscopic test applied by Dr. Golub determines the presence of reprocessed wool by counting, in a prescribed manner, under a microscope, the number of characteristic breaks in a sampling of wool fibers chosen from portions of the fabric and then calculating from the number counted the percentage of breakage. The percentages are then compared with percentages of characteristic breaks found in test samples where the percentage of reprocessed wool is known.

17. The characteristic breaks referred to in Finding No. 16 are believed by experts for both parties to be caused by the impact of the sharp wires used in picking, garnetting, and combing machinery which process fibers preparatory to spinning and weaving.

18. It is common ground among the experts that the tighter the wool fibers are held together, the greater is the percentage of characteristic breaks which can be anticipated.

19. Dr. Golub, the expert called by the Commission, received his doctorate in Biology at Harvard University after doing both graduate and undergraduate work in the same field. He has had long experience in fiber and cellular structure studies, is a competent microscopist and has performed extensive research in wool fiber construction and identification. He has had practical commercial experience in the field of fiber identification and is active in association work and in the adoption and perfection of standards for textile identification. He personally performed or supervised the tests on the fabrics in question in this proceeding. He based his opinion on both his studies of the experiments of others and on experiments and observations made by himself.

20. Mr. Francis K. Burr, the expert called by respondents, majored in chemistry at Wesleyan University where he received a B.S. and M.S. Degree. He has had extensive practical experience in the textile field in chemical finishing, quality control and fiber identification. His experience with a microscope has been more limited than has that of Dr. Golub, and he, at no time, questioned the accuracy of Dr. Golub's microscopic observations. He has not himself performed experiments in the identification of wool fibers by the tests conducted by Dr. Golub and did not testify on any microscopic examination of the fabrics received in evidence. He based his opinion on his general knowledge of the textile business and on his experience in general.

21. Dr. Golub's test findings with respect to mislabeling of wool products by reason of inadequate designation of other fibers are as follows:

Exhibit No.	Piece No.	Label	Test Finding
11.....	6197	80% Reprocessed wool..... 20% rayon.....	87.6% wool. 7.4% nylon. 3.7% acrylic. 1.0% polyester. 3% rayon and acetate.
15.....	5722	80% Reprocessed wool..... 20% rayon.....	88.2% wool. 7.6% nylon. 3.0% acrylic. 1.2% various. Including rayon, modacrylic, and polyester.
10.....	5627	90% wool..... 10% undetermined.....	93.6% wool. 3.1% nylon. 3.3% various. Including rayon acetate and acrylic traces of four fibers mixed in wool.

22. No evidence was offered by respondent in opposition to the test findings of Dr. Golub described in Finding No. 21, and they are hereby adopted.

23. Dr. Golub's test findings with respect to mislabeling of wool products by reason of the fact that they contained reprocessed fibers when designated as all wool or 90% wool are as follows:

Exhibit No.	Piece No.	Label	Test Finding
10.....	5627	90% wool..... 10% undetermined.	At least 50% reprocessed wool.
12.....	6269	All wool.....	98.7% wool fiber, 1.3% man-made fiber. At least 25% reprocessed wool.
13.....	4341	---do.....	94% wool fiber, 4.6% nylon, 1.4% mixed man-made fiber. At least 50% reprocessed wool.
14.....	6284	---do.....	98.2% wool fiber, 1.8% mixed man-made fiber. At least 25% reprocessed wool.

24. In making such test findings, Dr. Golob assumes that the sample of cloth received by him is characteristic of the bolt of cloth and that the sample of fiber separated by him from the sample is also characteristic. He has cross-checked his findings which are made by the use of a sampling test method originated by Dr. Werner Von Bergen, utilizing some 600 long fibers picked from threads and laid across a microscope slide vertically. This cross-checking was accomplished by using a sampling method devised by himself which cuts from the cloth short segments of fibers. These short fibers are stirred and then laid upon the microscope slide in varying directions. The results from the two sampling methods correlated closely except in one instance, and, in that instance, Dr. Golob reported on the lower of the percentages of breaks observed, thus taking the result most favorable to respondents. Dr. Golob also concludes, based on his

experience, that the characteristic break damage caused by the re-processing of wool which has been woven into a fabric at any time will always be substantially greater than break damage caused by re-working of wool fiber which has not been woven at any time. Dr. Golub reaches the last conclusion, based on his experiments, the study of experiments of others and on his opinion, that characteristic break damage is not as great on wool fibers which have not been woven because fabrics not woven are less subject to damage. He also concludes, based on his experiments and experience, that continued re-working of wool fibers which have not been woven will not substantially increase the number of characteristic breaks to the extent that will be the case when woven fabric is reprocessed. He reaches this conclusion because the fiber weakened by previous breakage will tend to separate at the weakened spot and thus remove evidence of a previous characteristic break. He testified also that processing and finishing would not increase the count substantially.

25. Mr. Francis K. Burr, respondents' expert, based his testimony on his general knowledge of textiles and his study of the reported experiments of Mr. Werner Von Bergen. While he does not attack in any way the characteristic break count of Dr. Golub, he contends that it is possible for wool fiber, although not woven at any time, to receive a greater number of breaks than wool fiber which has been woven loosely. He also contends that the number of breaks in wool fiber would tend, if plotted on a graph, to increase on a straight line basis for each reprocessing. Dr. Golub's opinion was that the number of characteristic breaks would tend to form a curve, if plotted, because the percentage of breaks would not increase proportionally to the number of times processed. Mr. Burr further contended that in the absence of knowledge of the type and quality of the wool and the dyeing processes through which it had passed, it was not possible to determine conclusively whether wool was reprocessed, as defined by the Act, or simply reworked without weaving or felting, thus remaining "wool" as the term is used under the Act.

26. The examiner finds that Dr. Golub's tests and his opinions drawn from them are reliable and substantial evidence of the existence of reprocessed wool in the samples submitted (which are tabulated in Finding No. 23) to at least the extent to which he testified. In making this finding, the examiner has considered: the experience of the two experts; the logical probabilities from the reasoning of each; their respective experience in experimental observations; the fact that Mr. Burr did not perform tests on the fabric in question and that the respondents as producers of the fabric offered no credible proof con-

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cerning the fibers which formed the raw stock for the particular pieces involved.

27. Uncontradicted testimony established that respondents were probably not motivated by profit in misbranding the fabrics because the fibers represented to have been contained in the fabrics could have been purchased in certain instances more cheaply than the fibers actually present. The hearing examiner, however, regards this circumstance as wholly immaterial on the question whether the fabric was in fact misbranded. (See *Smithline Coats, etc.*, 45 F.T.C. 79 (1948).)

CONCLUSIONS

1. The findings of fact were made on the basis of substantial and reliable evidence and the proceeding is in the public interest, in that it seeks to prevent misbranding of wool fabrics.

2. The chemical tests conducted were adequate to determine quantitatively the amounts of wool and of other fibers contained in samples of fabric produced by respondents. (*Hunter Mills Corporation, et al. v. F.T.C.*, 284 F. 2d 70 (2d Cir. 1960) cert. den. 366 U.S. 903.) The sampling of bolts of cloth was properly made and is adequate as representative of respondents' products. (*Milwaukee Allied Mills, Inc., et al.*, 55 F.T.C. 1530 (1958); *Smithline Coats, etc.*, 45 F.T.C. 79 (1948).)

3. The microscopic tests, both as described by Mr. Werner Von Bergen and as practiced by Dr. Samuel J. Golub, are reasonably reliable qualitative tests for the presence of reprocessed wool and for the approximation of the proportions thereof when performed by a qualified microscopist, having had a substantial experimental background in wool fabric identification of known fiber proportions.

4. The testimony of Dr. Samuel J. Golub, as to the approximate percentages of reprocessed wool in the samples of fabric manufactured by the respondents, constituted substantial and reliable proof that said samples contained at least the amounts of reprocessed fibers to which he testified. Thus, counsel supporting the complaint sustained the burden of proof.

5. It is not essential that a test be capable of determining quantitatively the precise amount of a particular fiber. It is sufficient that the test under proper conditions when undertaken by a qualified expert, determines the approximate amount within reasonable limits.

6. The testimony, both expert and lay, introduced by respondents, failed to cast doubt on the validity of the test findings made by the expert who testified for the Commission.

7. The testimony of the deponents and the employees of the Commission established that the samples tested by the expert for the Commission were samples of fabric manufactured by respondents.

8. Respondent corporations are mere extensions of the Furman family. The officers and directors of each are the family. Moreover, the labeling practices disclose that there is no real distinction, in practice, between the corporations. Labels of one corporation are sometimes used when the weaving has been done by another, depending on the availability of the labels. Similarly, regardless of the plant in which the weaving is done, the invoice will invariably be drawn by one or another of the respondent corporations, depending upon which factoring concern is to finance the sale. It is accordingly deemed both necessary and proper to issue an order against all of the corporate respondents, even though the samples of cloth received in evidence were invoiced by only one and labelled by another. (See *Luckenbach SS Co. v. W. R. Grace & Co.*, 267 Fed. 676, 680 (4th Cir. 1920).) On the facts established, it is found that the corporate respondents were merely names used to cloak the sales activities of the Furman family so that their corporate identities were a fiction. To recognize that fiction would not be justified on the facts here disclosed.¹ (Compare *National Lead Co. v. F.T.C.*, 227 F. 2d 825 (7th Cir. 1955), Reversed 252 U.S. 419 (1957), Modified 244 F. 2d 312.) Similarly, each of the individual respondents, though looking for guidance primarily to Max Furman, cooperated in the operation of the business of each corporate respondent and actively participated therein. An order against each individual and each corporation is deemed necessary to be fully effective to prevent continuation of the unfair practices. (*F.T.C. v. Standard Education Society*, 302 U.S. 112 (1937).)

9. The acts and practices of the respondents as found 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Allenton Mills, Inc., Scots Mills, Inc., Maine Mills, Inc., corporations, and their officers, and Benjamin Furman, Fanny Furman, and Max Furman, individually and as officers of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in connec-

¹ For a recent review of the considerations involved in piercing the corporate veil, see *Labor Board v. Deena Artware, Inc.*, 361 U.S. 398 at 403 (1959).

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tion with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool fabrics or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding of 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 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 each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective July 21, 1961, the initial decision of the hearing examiner shall, on the 24th day of May 1962, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.