

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

Docket 8436. Complaint, June 21, 1961—Decision, Nov. 27, 1962

Order requiring New York City distributors of wool products, principally to
retail stores including chain and department stores, to cease violating

the Wool Products Labeling Act by selling in commerce skirt lengths containing wool, without any tags or labels disclosing the fiber content.

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 Sacks Woolen Co., Inc., a corporation, and Abraham Goodman, Nathan Sacks, and Martin Sbarge, individually and as officers of 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, 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 Sacks Woolen Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Abraham Goodman, Nathan Sacks, and Martin Sbarge are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 215 West 39th Street, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since November 1959, respondents have 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 woolen piece goods, labeled or tagged by respondents as consisting of "50% wool, 50% rayon" and "36% wool, 34% cotton, 20% rayon, 10% nylon", whereas, in truth and in fact, said woolen pieces contained substantially less

Initial Decision

61 F.T.C.

woolen fibers than was stated on the foregoing labels or tags affixed thereto.

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 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 woolen piece goods with labels which failed: (1) to show the true generic names of the fibers present and (2) to show the percentages of such fibers.

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with other corporations, firms and individuals likewise engaged in the sale of wool products, including woolen piece goods.

PAR. 6. 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. Bruce T. Fraser for the Commission.

Guzik and Boukstein, of New York, N.Y., by *Mr. Leo Guzik* for respondents.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

The Federal Trade Commission, on June 21, 1961, issued its complaint, charging the respondents named in the caption hereof with violations of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act. By their answer, respondents made a general denial of the alleged violations, and entered certain affirmative defenses.

After postponements for negotiations and for the convenience and necessity of counsel, hearings were held in New York, New York, on February 19 and 20, 1962, at which the presentation of evidence in support of, and in opposition to the complaint was concluded. Proposals and briefs were filed by both sides on March 23, and replies thereto were filed on April 3 and 9, 1962.

After having carefully considered the entire record in this proceeding and the proposals and briefs of the parties, the hearing examiner issues this initial decision. Findings proposed by the parties, which

are not adopted herein, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

FINDINGS OF FACT

1. Respondent Sacks Woolen Co., Inc., sometimes herein referred to as Sacks, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

2. Individual respondents Abraham Goodman, Nathan Sacks, and Martin Sbarghe are officers of the corporate respondent. Said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of the corporate respondent, including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 215 West 39th Street, New York, N.Y.

3. Subsequent to the effective date of the Wool Products Labeling Act of 1939, sometimes herein referred to as the Wool Act, and more especially since November 1959, respondents have 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.

4. The average volume of business of Sacks during the past several years has been approximately \$2,500,000 annually. It sells principally to retail stores, including chain and department stores, which resell its products primarily to women who do their own sewing.

5. Although Sacks sells other kinds of merchandise, including woolen fabrics in 12 and 15 yard lengths, the evidence herein with respect to its branding of wool products relates to one yard pieces of fabric which are referred to as "skirt lengths", each containing the amount of material normally required to make a skirt. To produce these skirt lengths, piece goods are cut by Sacks into one yard lengths, folded, and separately packaged by means of a tag or label usually in the form of a polyethylene band or cardboard header attached to a hanger. The tag or label attached to each piece identifies the skirt length as Sacks' product and provides for its fiber content to be shown by imprinting, by rubber stamp impressions, or by self-adhesive stickers. Sacks sells about 700,000 skirt lengths per year, which retail at prices ranging from about \$1.99 to \$3.99 each.

6. The respondents, in the course and conduct of their business, were and are in substantial competition in commerce with other corporations, firms, and individuals likewise engaged in the sale of wool products, including woolen piece goods.

7. Paragraph 3 of the complaint charges that certain of respondents' wool products were misbranded within the intent and meaning of the Wool Act, in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein; and that among such misbranded wool products were woollen piece goods which contained substantially less woollen fibers than stated on the tags or labels affixed thereto. The evidence in support of this charge was based upon Commission's Exhibits (abbreviated herein as CX) 7, 10, 11 and 12.

8. CX 10, 11 and 12 were obtained from Sacks on November 22, 1960, before the complaint in this matter was issued. They are samples of fabrics sold in commerce by Sacks with tags showing their fiber content as 15% reprocessed wool, 35% nylon, and 50% rayon. These fabrics were purchased by Sacks from Irving S. Cohen, Inc., which, it is officially noticed, was a respondent in a Federal Trade Commission proceeding, Docket No. 7478, in which a consent cease and desist order was issued September 9, 1959 [56 FTC 287].

9. CX 10 contains 58.8% woollen fibers, 22.4% nylon, 1.3% acetate, and 17.5% residue consisting of rayon and a trace of cotton. CX 11 contains 30.9% woollen fibers, 29.4% nylon, 4% acetate, and 35.7% residue consisting of rayon and a trace of cotton. CX 12 contains 32.9% woollen fibers, 24.9% nylon, 4.9% acetate, and 37.3% residue consisting of rayon and a trace of cotton.

10. The vice president of Sacks testified that the fabrics represented by CX 10, 11 and 12, because of their actual fiber content, were superior to fabrics having the fiber content shown on their tags. There is no direct contradiction of this testimony, but the same witness also testified, in effect, that the value of fabrics containing reprocessed woollen fibers might be increased or decreased by an increase in the proportion of nylon in the fabrics, depending upon the mill which makes them. Accordingly, there is no satisfactory basis on which it can be found that CX 10, 11 and 12, which contain a higher percentage of reprocessed wool and a lower percentage of nylon and rayon than shown on their tags, were, in fact, superior to fabrics having the fiber content shown on their tags. In any event, it does not appear that the comparative value or quality of the fabrics as marked and as constituted is relevant to the issues here presented.

11. The fiber content shown on the label attached to CX 7 was 33 $\frac{1}{3}$ % wool, 33 $\frac{1}{3}$ % nylon, and 33 $\frac{1}{3}$ % orlon-acrylic; and its actual content was 43.6% woollen fibers, 51.1% acrylic, and 5.3% orlon. This fabric was sold and shipped to the Hecht Company, Washington, D.C., by Sacks on September 8, 1961, several months after the complaint

issued, as part of a trial shipment of 12 skirt lengths. The uncontradicted evidence is that this fabric has a higher value on the basis of its actual fiber content than its value on the basis of the content shown on the label, and that it would have been to the advantage of Sacks to label it correctly.

12. All the evidence offered in support of the charge contained in Paragraph 3 of the complaint relates to fabrics having a substantially higher wool content than that shown on the labels. The instances alleged in this paragraph of the complaint as examples of misbranding relate to piece goods which contained substantially less woolen fibers than stated on their tags and labels. No evidence was offered to support the allegations with respect to those examples. The respondents contend, therefore, that the allegations of Paragraph 3 are not sustained, and that the charge based upon that paragraph should be dismissed.

13. The broad charge of Paragraph 3 that respondents' wool products were misbranded "in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein" is not necessarily limited by the alleged examples of misbranding which were not supported by the evidence. It is concluded, therefore, that the evidence relating to fabrics having a higher wool content and a lower content of certain other fibers than shown on the labels falls within the scope of this charge of the complaint.

14. Respondents contend that a label which understates the wool content does not violate the Wool Act. They argue, in effect, that the purpose of the Act was to prohibit the deceptive use of nonwoolen fibers as a substitute for wool; that there is no prior instance in which the Commission has based a charge of violation on the understatement of the wool content; and that there is no public interest in protecting the consumer against a product containing more wool than represented on the label.

15. Section 4 of the Wool Act specifically provides that a wool product shall be misbranded "If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified"; and it requires, in effect, that the label must show the percentage of wool and of each fiber other than wool. This section is not satisfied by showing a *minimum* percentage of wool and disregarding the requirement that the label must also show the percentage of each fiber other than wool.

16. An understatement of the wool content and a consequent overstatement of other constituent fibers in a wool product are squarely in conflict with the requirements of Section 4 of the Wool Act. Since

this constitutes misbranding within the meaning of the Act, and since, under Section 3, anyone who misbrands a wool product "is guilty of an unfair method of competition, and an unfair or deceptive act or practice", it is unnecessary, and would be irrelevant, to inquire concerning relative values or consumer preferences with respect to fabrics so misbranded.

17. Counsel supporting the complaint has cited no prior instance in which the Commission has based a charge of violation on the understatement of wool content, and the hearing examiner has found none. This may well be due to the fact, as indicated by the evidence in this case, that ordinarily it is to the advantage of one who offers wool products for sale to show on the label a percentage of wool representing the maximum proportion of its content in the product. In such circumstances, misbranding by understating wool content would be expected to occur rarely, if at all. Where it does occur, however, and is challenged, its rarity, either in occurrence or in discovery, constitutes no defense.

18. In view of the unequivocal requirements of Section 4 of the Wool Act, an examination of its legislative history to ascertain its purpose with respect to the understatement of wool fibers could not serve to alter the clear and unambiguous language of the Act, itself. It may be helpful, however, to consider the Textile Fiber Products Identification Act, approved September 2, 1958, which provides, in part, that a textile fiber product is "misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein." Respondents are not here charged with violation of that Act, but it reflects a public policy which cannot be ignored in this case. In adopting that Act, Congress clearly determined that there is a public interest in the correct disclosure of the amount of all constituent fibers contained in textile products generally. While this declaration of public policy does not extend the scope, it does affirm and clarify, if clarification is needed, the comprehensive requirements of the Wool Act. The Wool and Textile Acts are so closely related in subject matter and purpose that their requirements must necessarily be construed and applied on a consistent basis.

19. It is concluded, therefore, that the understatement of the wool content and the consequent overstatement of other constituent fibers on the tags and labels of CX 7, 10, 11 and 12 constitute misbranding within the meaning of Section 4 of the Wool Products Labeling Act and violations of Section 5 of the Federal Trade Commission Act. Although the misbranding of CX 7 occurred after the issuance of the

complaint herein, it is a post-complaint instance of a similar type of misbranding represented by CX 10, 11 and 12, and should be considered.

20. Paragraph 4 of the complaint charges that certain of respondents' wool products were misbranded, in that they were not stamped, tagged, or labeled as required by the Wool Act. The evidence in support of this charge is based upon CX 6 and 13, the tags or labels of which were not marked so as to disclose the fiber content.

21. CX 6 is a skirt length containing wool, which was sold and shipped by Sacks to Scott Stores, Western Springs, Illinois, in December, 1959. No tag or label disclosing its fiber content was attached to this exhibit when it was obtained. It was one of about 30 skirt lengths from Sacks which were on display in the store from which it was obtained, all of which were also unmarked as to fiber content. These skirt lengths were part of a shipment by Sacks of 100 skirt lengths to each of six Scott Stores.

22. Respondents contend that CX 6, and the other skirt lengths on display in the store from which it was obtained, were unmarked as to fiber content through inadvertence after the exercise of considerable care. In discussing how this inadvertence may have occurred, it was explained by the witness that these skirt lengths were assorted by Sacks in bundles, each containing 25 pieces, after which care was exercised to staple a heavy paper label showing fiber content to each piece. It was stated that in this process of labeling one bundle of 25 pieces must have been missed, and that it was, therefore, apparently shipped without any marking as to fiber content.

23. Respondents contend that this is the logical explanation of the presence of "about 30" skirt lengths in the store which were not marked as to fiber content, and that, in all probability, only one bundle of 25 pieces was shipped without fiber identification. In support of this contention they emphasize the care which the record shows they exercise in marking wool products generally, and which they exercised in marking this particular shipment of wool products as to fiber content. Although persuasive, this was a hypothetical explanation, and the witness making it conceded that it was possible the entire shipment to that store could have been unmarked; but he stated: "It doesn't seem logical in my mind. I don't know how four bundles could have been mislabeled."

24. CX 13 is a skirt length, which was sold and shipped by Sacks to Stern's Department Store, Paramus, New Jersey, in November, 1960. When it was obtained, the portion of the label on this exhibit designed to be stamped with the fiber content was blank. There were

30 or 40 skirt lengths in the same display in the store from which this exhibit was obtained. One of these skirt lengths was obtained, in addition to CX 13, and it was marked as to fiber content. There is no evidence that the other skirt lengths in the display came from Sacks, or that they were not marked as to fiber content.

25. The investigating attorney who obtained CX 13 explained that for the purposes of his investigation he selected Stern's Department Store in Paramus, New Jersey, from a number of respondents' customers in order to meet interstate commerce requirements, and that, finding evidence of misbranding there which he considered sufficient, he did not go to other stores.

26. Respondents contend that CX 13 represents an inadvertent omission of the fiber content stamp from the label of a single skirt length which was selected from many other properly labeled skirt lengths on the counter of the store from which it was obtained. Through a defense witness they offered a logical explanation of how such an inadvertence may have occurred.

27. It is apparent, therefore, that the evidence discloses two instances, in widely separated locations in which respondents' wool products were unmarked as to fiber content. One such instance is representative of 25 or more unmarked skirt lengths, and the other represents only one unmarked skirt length. Respondents contend that they exercised great care in marking wool products to show fiber content, and that these were inadvertent instances which escaped their vigilance.

28. No evidence has been offered to show that respondents did not exercise care as claimed, or that the instances of misbranding disclosed by the evidence were not the result of inadvertence. There is no suggestion in the evidence, either directly or by implication, that respondents have deliberately misbranded their wool products by failure to mark or by inaccurately marking them as to fiber content.

29. These considerations, however, do not warrant dismissal. The Wool Act does not make the misbranding of wool products unlawful only when it is intentionally done, but, on the contrary, it also provides a criminal penalty, not here invoked, for the willful misbranding of wool products. The exercise of reasonable care to avoid misbranding does not constitute a defense under the Act, except in connection with unavoidable variations in manufacture not applicable here. In these circumstances, there was no obligation upon counsel supporting the complaint to prove intent or carelessness by respondents in misbranding their wool products, or to establish that a substantial portion of such products were misbranded. It was accord-

ingly unnecessary, and would have been inappropriate, for counsel supporting the complaint to attempt to rebut the evidence tending to support respondents' contentions on these points.

CONCLUSION

It is concluded, therefore, that 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 that they 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 that this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, Sacks Woolen Co., Inc., a corporation, and its officers, and Abraham Goodman, Nathan Sacks, and Martin Sbarge, 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, or the sale, transportation, distribution or delivery for shipment in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics, including ladies' skirt lengths, or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, 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 contained therein; or
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 each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

FINAL ORDER

This matter having been heard upon exceptions to the initial decision and brief in support thereof, filed by respondents, and upon oral argument, and the Commission having considered said exceptions and opposition thereto presented by counsel supporting the complaint; and It appearing that Paragraph 3 of the complaint alleges that among

the wool products misbranded by respondents in violation of Section 4(a)(1) of the Wool Products Labeling Act were woolen pieces containing substantially less woolen fibers than was stated on the labels attached thereto, whereas, as found by the hearing examiner, all of the evidence in support of the charge in said Paragraph 3 relates to fabrics having a substantially higher wool content than shown on the labels; and

The Commission having concluded that, although respondents' practice of understating on labels attached to wool products the amount of wool contained therein with the consequent overstatement of the other constituent fibers is false and deceptive and constitutes misbranding within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act and is in violation of Section 5 of the Federal Trade Commission Act, due to the substantial variance of the pleadings from the evidence it would be inappropriate to enter a cease and desist order as to this charge on this record; and

The Commission having further concluded that the hearing examiner's finding that respondents have violated Section 4(a)(2) of the Wool Products Labeling Act, as charged in Paragraph 4 of the complaint, is fully supported on the record by evidence showing that certain of respondents' wool products were unmarked as to fiber content, and that consequently this finding must be affirmed in the public interest:

It is ordered, That the initial decision be modified by striking therefrom finding number 13 on page 1231 thereof and by renumbering findings number 14 through 19 as findings number 13 through 18.

It is further ordered, That the initial decision be modified by addition of the following sentence to the hearing examiner's Conclusion:

However, in view of the substantial variance in the allegation in the complaint that respondents misbranded wool products in violation of Section 4(a)(1) of the Wool Products Labeling Act and the proof in support thereof, it is concluded that an order to cease and desist should not issue on this charge.

It is further ordered, That the order contained in the initial decision be modified to read as follows:

It is ordered, That respondents, Sacks Woolen Co., Inc., a corporation, and its officers, and Abraham Goodman, Nathan Sacks, and Martin Sbarge, 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, or the sale, transportation, distribution or delivery for shipment in commerce, as "com-

1226

Complaint,

merce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of woolen fabrics, including ladies' skirt lengths, or other "wool products", as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. 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 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 the charge in Paragraph 3 of the complaint that respondents have misbranded wool products in violation of Section 4(a) (1) of the Wool Products Labeling Act be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to reopen this proceeding, amend the complaint and take such action as may be warranted in the public interest.

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

It is further ordered, That respondents, Sacks Woolen Co., Inc., Abraham Goodman, Nathan Sacks and Martin Sbarge, 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 contained herein.

By the Commission, Commissioners Anderson and Higginbotham not participating.

IN THE MATTER OF

OXFORD HANDKERCHIEF CO., INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS