

Complaint

66 F.T.C.

IN THE MATTER OF

JACK J. FANBURG TRADING AS ANN LEE APPAREL
ET AL.

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

Docket C-807. Complaint, Aug. 7, 1964—Decision, Aug. 7, 1964

Consent order requiring two San Francisco retailers to cease labeling their fur, wool and textile products as "Ann Lee Originals" when they are not designed or created for respondents, failing to label fur, wool, and textile fiber products with required information, and removing and mutilating labels affixed to fur, wool and textile fiber products prior to ultimate sale and delivery.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Fur Products Labeling Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, the Textile Fiber Products Identification Act, and 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. Respondents Harry Fanburg and Jack J. Fanburg are individuals trading and doing business as Fanburg's Fine Apparel, a partnership. Their office and principal place of business is located at 770 Market Street, San Francisco, California.

Respondent Jack J. Fanburg is sole proprietor of Ann Lee Apparel. The office and principal place of business is located at 2620 Mission Street, San Francisco, California.

Jack J. Fanburg also owns branch stores at 52 Hillside Court, San Mateo, California and 2640 Mission Street, San Francisco, California.

Respondents are retailers of wool products, fur products and textile fiber products.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act of August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely or deceptively labeled or otherwise falsely or deceptively identified in that the label on or affixed thereto set forth the statement "Ann Lee Originals" and thereby represented that the said fur products were designed, fashioned or created by or for the said respondents, and were available exclusively from the said respondents. In truth and in fact said fur products were not designed, fashioned or created by or for said respondents, nor were said fur products available only from said respondents, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled with any of the information required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 4(2) of the Fur products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in handwriting on labels, in violation of Rule 29(b) of said Rules and Regulations.

(b) Required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced by respondents in that they were not invoiced with any of the information required by Section 5(b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations thereunder.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations pro-

mulgated thereunder in that required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 8. Respondents have removed and mutilated and have caused and participated in the removal and mutilation of, prior to the time fur products subject to the provisions of the Fur Products Labeling Act were sold and delivered to the ultimate consumer, labels required by the Fur Products Labeling Act to be affixed to such products, in violation of Section 3(d) of said Act.

PAR. 9. The acts and practices of the respondents, as set forth in Paragraphs Three, Four, Five, Six, Seven and Eight were and are in violation of the Fur Products Labeling Act 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. 10. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported or caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged or labeled with any of the information required under Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

PAR. 12. After certain textile fiber products were shipped in commerce, respondents have removed and mutilated and have caused and participated in the removal and mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to such products, prior to the time such textile fiber products were sold and delivered to the ultimate consumer, in violation of Section 5(a) of said Act.

PAR. 13. The acts and practices of the respondents, as set forth in Paragraphs Eleven, and Twelve were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated under said Act, 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. 14. Subsequent to the effective date of the Wool Products Labeling Act of 1939, 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 product" is defined therein.

PAR. 15. Certain of said wool products were misbranded in that they were falsely or deceptively labeled or otherwise falsely or deceptively identified in that the label on or affixed thereto set forth the statement "Ann Lee Originals" and thereby represented that the said wool products were designed, fashioned or created by or for said respondents and were available exclusively from the said respondents. In truth and in fact said wool products were not designed, fashioned or created by or for said respondents, nor were said wool products available only from said respondents, in violation of Section 4(a)(1) of the Wool Products Labeling Act of 1939.

PAR. 16. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with any of the information 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.

PAR. 17. Respondents with the intent of violating the provisions of the Wool Products Labeling Act of 1939 have removed and mutilated and have caused and participated in the removal and mutilation of the stamp, tag, label or other identification required by the Wool Products Labeling Act of 1939 to be affixed to wool products subject to the provisions of such Act, prior to the time such wool products were sold and delivered to the ultimate consumer, in violation of Section 5 of said Act.

PAR. 18. The acts and practices of the respondents as set forth above in Paragraphs Fifteen, Sixteen and Seventeen 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. 19. In the course and conduct of their business respondents now cause and for sometime last past, have caused their said textile products to be offered for sale in issues of the San Francisco News Call Bulletin, a newspaper published in the City of San Francisco, State of California and distributed in interstate commerce and have therefore maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 20. Respondents in the course and conduct of their business, as aforesaid, have made statements in advertising and on labels on or affixed to textile products, such as, "Ann Lee Originals" and thereby have represented that the said textile products were designed, fashioned or created by or for the said respondents, and were available exclusively from the said respondents. In truth and in fact said textile products were not designed, fashioned or created by or for the said respondents and were not available exclusively from said respondents.

PAR. 21. The acts and practices set forth in Paragraph Twenty are false and deceptive and have had and now have the tendency and capacity to mislead and deceive purchasers of said textile products as to the design, fashion, creation, originality and availability of said products.

PAR. 22. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 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, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act and the Fur Products Labeling 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 re-

spondents 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 Jack J. Fanburg is an individual trading as Ann Lee Apparel, a sole proprietorship with his office and principal place of business located at 2620 Mission Street, in the city of San Francisco, State of California.

Respondents Jack J. Fanburg and Harry Fanburg are individuals and copartners trading and doing business as Fanburg's Fine Apparel, with their office and principal place of business located at 770 Market Street, city of San Francisco, State of California.

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 Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or in the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce," and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg and Harry

Fanburg, individually and as copartners, trading as Fanburg's Fine Apparel, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating or causing or participating in the removal or mutilation of, the stamp, tag, label, or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to ultimate consumer.

It is further ordered, That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Misrepresenting in any manner that fur products offered for sale are designed, fashioned or created by or for respondents or are available exclusively from respondents.
2. Using the word "original" or any other words or terms of similar import and meaning as descriptive of respondents' fur products unless such fur products are designed, fashioned or created by or for respondents or are available exclusively from respondents.
3. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.
4. Setting forth information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder in handwriting on labels affixed to fur products.
5. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely and deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the informa-

tion required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Failing to set forth on invoices the item number or mark assigned to fur products.

It is further ordered, That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, prior to the time any fur product subject to the provisions of the Fur Products Labeling Act is sold and delivered to the ultimate consumer, any label required by the said Act to be affixed to such fur product.

It is further ordered, That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel 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 or delivery for shipment in commerce, of wool wearing apparel 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 such products by:

1. Misrepresenting in any manner that wool products offered for sale are designed, fashioned or created by or for respondents or are available exclusively from respondents.

2. Using the word "original" or any other words or terms of similar import and meaning as descriptive of respondents' wool products unless such wool products are designed, fashioned or created by or for respondents or are available exclusively from respondents.

3. 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.

It is further ordered, That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel, and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel and respondents' representatives, agents and employees, di-

rectly or through any corporate or other device, do forthwith cease and desist from removing or mutilating or causing or participating in the removal or mutilation of any stamp, tag, label or other means of identification affixed to any wool product subject to the provisions of the Wool Products Labeling Act of 1939 with intent to violate the provisions of the said Act.

It is further ordered. That respondents Jack J. Fanburg, an individual trading as Ann Lee Apparel and Jack J. Fanburg, and Harry Fanburg, individually and as copartners trading as Fanburg's Fine Apparel, 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 textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner that textile products offered for sale are designed, fashioned or created by or for respondents or are available exclusively from respondents.

2. Using the word "original" or any other words or terms of similar import and meaning as descriptive of respondents' textile products unless such textile products are designed, fashioned or created by or for respondents or are available exclusively from respondents.

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

LEON FLEISHER TRADING AS KNITS BY CARIN, ETC.

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