

RICHARD S. MARCUS FARMER, INC.
STANTON BLANKET COMPANY

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

Docket 8610. Complaint, Dec. 17, 1963—Decision, Dec. 18, 1964

Order requiring a Fairfield, Conn., company to cease violating the Wool Products Labeling Act by falsely labeling wool blankets and other wool products as to the true generic name of fibers and the percentages of such fibers, and to cease falsely invoicing such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Richard S. Marcus, an individual trading as Stanton Blanket Company, hereinafter referred to as respondent, has 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. Richard S. Marcus is an individual trading as Stanton Blanket Company, with his office and principal place of business located at 36 Curtis Terrace, Fairfield, Connecticut (P.O. Box 6251, Bridgeport, Connecticut).

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1961, respondent has 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. 3. Certain of said wool products were misbranded by the respondent 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, but not limited thereto, were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed.

PAR. 4. Certain of said wool products were further misbranded by respondent 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 wool products with labels which failed:

1. To set forth the true generic name of the fibers present; and
2. To show the percentages of such fibers.

PAR. 5. The acts and practices of respondent, as set out in Paragraphs Three and Four were, and are, in violation of the Wool Products

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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. 6. Respondent in the course and conduct of his business as aforesaid, has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his said products. Among such misrepresentations, but not limited thereto, were statements representing certain blankets to be "100% Wool," whereas, in truth and in fact, the said blankets contained substantially less wool than the amount represented.

PAR. 7. The acts and practices set out in Paragraph six have had, and now have, the tendency and capacity to mislead and deceive purchasers of said blankets as to the true content thereof, and were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Thomas C. Marshall and Mr. William Harry Garber for the Commission.

Respondent, pro se.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

JUNE 8, 1964

The allegations in this matter charge violations of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act. The Wool Act charges are that the respondent has violated Section 4(a)(1) in that certain of his wool products were misbranded because they were falsely and deceptively labeled or tagged as to the character and amount of the constituent fibers contained therein. It is also charged respondent has violated Section 4(a)(2) in that certain of his wool products were misbranded since they were not stamped, tagged or labeled as required under the provisions of said section and in the manner and form as prescribed by the Rules and Regulations promulgated under said act. The former charge is directed at the practice of affixing to blankets labels which set forth fiber contents substantially different from the fiber contents of the woolen blankets, thereby affirmatively misrepresenting the fiber content of such blankets. The latter charge is directed to respondent's failure to set forth on the labels the true generic name of all of the fibers

present in the woolen blankets to which the labels were affixed, and his failure to show the correct percentages of such fibers, thereby omitting to properly make the affirmative disclosure of fiber content in accordance with the requirements of the statute.

With respect to the Federal Trade Commission Act, the charges are that the respondent has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his wool blankets, and that these practices have the tendency and capacity to deceive purchasers of said blankets, and are to the prejudice and injury of the public and of the respondent's competitors.

The hearing examiner has carefully reviewed and considered the proposed findings of fact and conclusions of law with reasons therefor. Such proposed findings and conclusions as are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. Upon the entire record in this case, the hearing examiner makes the following findings of fact.

FINDINGS OF FACT

A. Respondent

1. Respondent Richard S. Marcus is an individual trading as Stanton Blanket Company, with his office and principal place of business located at 36 Curtis Terrace, Fairfield, Connecticut (P. O. Box 6128, Bridgeport, Connecticut).

B. Commerce

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1961, respondent has 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.

C. Deceptive Labeling as to Fiber Constituency Under Section 4(a)(1)

3. Certain of said wool products were misbranded by the respondent 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.

4. Among such misbranded wool products, but not limited thereto,

were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed.

5. On or about June 14, 1962, Commission Investigator Posnick purchased one of the respondent's blankets (Commission Exhibit 8) from Medical Service Co., Inc., 373 West Market Street, Newark, New Jersey (Transcript pages 25-31, 52-65). This blanket bore a Stanton Blanket Company label which set forth the fiber content as "70% Wool, 30% Rayon." (See Commission Exhibit 7; see also, Commission Exhibit 14 and Transcript pages 30, 31, 52-55.)

6. Subsequently, tests on the aforesaid blanket were conducted by a duly qualified expert, Chemist Carl Ackerbauer. The result of these tests showed the actual fiber content of Commission Exhibit 8 to be "79.0% Wool, 5.9% Nylon, 1.0% Viscose, 10.1% Orlon, 3.5% other fibers." (See Commission Exhibit 47; see also, Transcript pages 257-266 re testing of Commission Exhibits 8, 17, 29 by Mr. Ackerbauer.)

7. The foregoing exhibit (*i.e.*, Commission Exhibit 8) was also tested by Idelle Shapiro, a duly qualified textile technologist employed by the Federal Trade Commission, who found it to contain substantially the same fibers. (See Commission Exhibit 50; see also, Transcript pages 194-244 as to testing of Commission Exhibits 8, 17, 22 by Miss Shapiro.)

8. The "acrylic" referred to in the Commission laboratory report is the generic name for the "Orlon" referred to in the Ackerbauer report and the "Rayon" referred to in the Commission report is the generic name for the "Viscose" referred to in the Ackerbauer report (Transcript page 213). Correlation of the reports is therefore possible. Additionally, minor variations in different areas of a multi-blend fabric are generally anticipated due to a lack of homogeneity in the fabric (Transcript page 213). Under both reports, the wool is substantially overstated, substantial percentages of nylon and acrylic are present in the product although not revealed on the label, and 10% rayon is not present as represented.

9. On or about June 28, 1962, Commission Investigator Posnick purchased another of respondent's blankets (Commission Exhibit 17) from the Kaufman Army-Navy Store, 57 Cortlandt Street, New York, New York (Transcript pages 71-80). This blanket bore a Stanton Blanket Company label which set forth the fiber contents as "90% Wool, 10% Nylon." (See Commission Exhibit 18; see also, Commission Exhibit 19 and Transcript pages 77, 78.) Subsequently, tests were conducted by a duly qualified expert, Chemist Carl A. Ackerbauer. The

results of these tests showed the actual fiber contents to be "89.9% Wool, 3.8% Nylon, 0.5% Viscose, 5.0% Orlon" (Commission Exhibit 46). The blanket was also tested by the Commission textile technologist whose report is essentially the same as that of Mr. Ackerbauer. Thus the nylon present in the product was understated to a substantial extent and substantial amounts of other fibers are present which are not revealed on the label.

10. The same investigator, on or about July 10, 1962, purchased one of respondent's blankets (Commission Exhibit 22) from the same Kaufman Army-Navy Store (Transcript pages 81-87). This blanket bore a label with respondent's "WPL 12295" and set forth the fiber contents as "90% Wool, 10% Nylon." (See Commission Exhibit 23; see also, Commission Exhibit 24 and Transcript page 81.) Subsequently, tests were conducted by the Commission's technologist, Idelle Shapiro, duly qualified as an expert. The results of these tests showed the actual fiber contents to be in one instance "93.7% Wool, 2.0% Nylon, 4.5% other fibers." (See Commission Exhibit 48A.) Thus the nylon was understated by 8% and the presence of substantial amounts of other fibers was not revealed.

11. The same Commission Investigator, on or about May 23, 1962, purchased another of respondent's blankets (Commission Exhibit 29) from M. Rappaport & Son, Inc., 2307 Broadway, New York, New York (Transcript pages 89-103, 138-144). This blanket bore a label with respondent's "WPL 12295" thereon, and a fiber content disclosure of "100% All Wool." (See Commission Exhibit 31; see also, Commission Exhibit 30 and Transcript pages 91-100, 401, 402.) Subsequently, tests were conducted by expert Carl Ackerbauer, which test report (Commission Exhibit 48) showed the presence of 14.2% residue other than wool by the 5% sodium hydroxide boil out method and 14.3% residue (moisture free) other than wool by the sodium hypochlorite method. The residue referred to was fibrous residue, foreign material having been removed (Transcript pages 262, 263).

12. With respect to this particular exhibit (Commission Exhibit 29), respondent insisted that it could not be his blanket. However, the evidence cited in the preceding paragraph is clearly to the contrary. Rebuttal witness Jack Shurgin, by whom respondent sought to prove that Commission Exhibit 29 was not his blanket, conceded that he knew nothing of the transaction whereby Commission Exhibit 29 was acquired (Transcript page 294). Respondent's contention was to the effect that the blanket could not have been his because it was the wrong color. However, he indicated that he handled approximately 26 styles and 100 colors of blankets (Transcript page 269). Respondent further

stated that he is not always present when labels are substituted (Transcript page 361), that all blankets are not examined when received (Transcript pages 356, 357, 359) and that various colors of blankets are in the warehouse at the same time (Transcript page 363). An examination of another of respondent's blankets introduced into evidence (Commission Exhibit 8) demonstrated that respondent does in fact sell blankets of a color similar to Commission Exhibit 29. Furthermore, the evidence establishes that M. Rappaport & Son, Inc., from which Commission Exhibit 29 was obtained, does not remove labels (Transcript page 292). Witness Sam Rappaport testified that blankets of the color of Commission Exhibit 29 were purchased from respondent by M. Rappaport & Son, Inc. (Transcript page 145).

13. All of the blankets aforesaid received in evidence were sold and shipped in commerce by respondent Stanton Blanket Company, and were labeled by Stanton Blanket Company in the manner indicated.

14. As further evidence of misbranding and the questionable intention of respondent to comply fully with the requirements of the Wool Products Labeling Act, uncontradicted testimony by Commission investigators Scott and Posnick indicates that respondent engaged in the practice of removing suppliers' labels bearing the fiber content designation 90% wool, 10% undetermined man-made fibers and substituting therefor labels bearing the designation 90% wool, 10% nylon prior to the time the blankets were sold. Respondent offered no explanation for this practice (Transcript pages 390-402). Furthermore, although respondent knew of the proceeding in the instant matter, he destroyed all suppliers' labels on blankets sold by him up to January 1, 1964 (Transcript pages 348-353).

15. As evidence of continuing violation currently, the Commission investigator on or about March 4, 1964, purchased another of respondent's blankets (Commission Exhibit 35) from Saks Fifth Avenue, New York, New York (Transcript pages 104-118). This blanket bore respondent's label (Commission Exhibit 37, Transcript pages 104, 105, 112-115) showing the fiber content to be "100% All Wool." Such blanket was tested by a duly qualified expert, W. H. Masterson, Better Fabrics Testing Bureau, Inc., 101 West 31st Street, New York, New York, and found to contain only 94.9% wool (Commission Exhibit 42, Transcript pages 314-322).

16. In the instances aforesaid, the sale by Stanton Blanket Company was to a customer located in a State other than the State from which the blanket emanated. Thus, the jurisdictional requirements of the Wool Products Labeling Act are satisfied.

17. Commission experts Carl A. Ackerbauer, Idelle Shapiro, and

W. H. Masterson were qualified to perform the fiber analyses which they made in connection with the instant proceeding. Such fiber content analyses were correctly performed and correctly reflected the fiber content of the swatches tested (see in particular Transcript pages 196-244, 245-256, 314-324). Respondent's expert (*i.e.*, Maurice Marcus, father of the respondent) offered no testimony that discredited in any way Commission's experts or the methods used by them in testing. (See Transcript pages 365-379.)

D. Misbranding Under Section 4(a)(2)

18. Certain of said wool products were further misbranded by respondent 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 wool products with labels which failed:

1. To set forth the true generic name of the fibers present; and
2. To show the percentages of such fibers.

E. Invoice and Shipping Memorandum Misrepresentations

19. Respondent in the course and conduct of his business as aforesaid, has made statements on invoices and shipping memoranda to his customers, misrepresenting the character and fiber content of certain of his said products. Among such misrepresentations were statements representing certain blankets to be "70% Wool, 30% Nylon," whereas, in truth and fact, the said blankets contained substantially different fibers and amounts of fibers than represented.

20. The evidence in support of this charge includes the misrepresentation on Stanton's invoice to Medical Service Co., Inc. (Commission Exhibit 6), which described the Stanton Blanket Company blanket obtained by Investigator Posnick (Commission Exhibit 8) as containing 70% wool, 30% nylon. The test report (Commission Exhibit 47) of the fiber content analysis of this blanket showed the actual contents to be 79.0% wool, 5.9% nylon, 1.0% viscose, 10.1% orlon (acrylic), 3.5% other fibers. Likewise, the report of Idelle Shapiro (Commission Exhibit 50) shows similar variations from the fiber content shown on the invoice. On this showing, it is clear that there is a violation of the Federal Trade Commission Act.

21. Respondent's customers are entitled to rely on the information furnished by respondent on invoices. The sales invoice (Commission

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Exhibit 16) furnished the Commission investigator by Medical Service Co., Inc., Newark, New Jersey, when the blanket in question was purchased contains the same fiber content information as respondent's invoice (Commission Exhibit 6).

22. It is the practice of respondent to disclose fiber content information on invoices (see Commission Exhibits 9A-D, 10-13) with respect to a variety of blankets, including blankets invoiced as "100% Wool," "90% Wool, 10% Nylon," "80% Wool, 20% Cotton," "70% Wool, 30% Rayon," "70% Reprocessed Wool, 30% Rayon," and a variety of other fiber content disclosures.

CONCLUSIONS

The acts and practices of respondent, set forth in Findings 3 to 18 inclusive were, and are, in violation of the Wool 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.

The acts and practices, set out in Findings 19 to 22 inclusive above, have had, and now have, the tendency and capacity to mislead and deceive purchasers of said blankets as to the true content thereof, and were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Respondent contends that if a wool product is labeled "70% Wool, 30% Rayon," whereas the wool product has a content of "75% Wool, 25% Rayon," no violation occurs because the purchaser is receiving even more wool than the label indicates. Even assuming that the wool content is more valuable price-wise than the rayon content, the purchaser, under these circumstances, is not entirely aware of what he is purchasing. He is entitled to accurate disclosure under the act. In *National Silver Co. v. Federal Trade Commission*, 88 F. 2d, 425 (CCA 2, 1937), it was held that the question of value was without merit in a proceeding under Section 5 of the Federal Trade Commission Act and stated:

Indeed even where the purchaser benefits by the deception it is misleading.

In the case of *Federal Trade Commission v. Algoma Lumber Co.*, 291 U.S. 67 (1934), the Supreme Court stated:

Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a

conception of business standards so corrupting in its tendency. The customer is prejudiced if upon giving an order for one thing, he is supplied with something else * * *. In such matters the public is entitled to get what it chooses though the choice may be dictated by caprice or by fashion or perhaps by ignorance.

That the understatement of wool content is a practice proscribed by the act is made clear by the language of the Commission in its final order in the *Sacks Woolen Company, Inc., et al.*, Docket 8436, Final Order November 27, 1962 [61 F.T.C. 1226, 1236]:

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, due to the substantial variance of the pleadings from the evidence it would be inappropriate to enter a cease and desist order as to the charge on this record.

In the *Sacks* case, the allegation with respect to the violation was that the respondents' wool products had contained less wool than the amount stated on the label; the proof was that there had been an overage of wool. In the instant case, the allegation is so worded as to charge that an overstatement or understatement of wool content is a violation. For example, the subparagraph of Paragraph Three of the complaint states: "Among such misbranded wool products, but not limited thereto, were wool products, namely, blankets, which contained substantially different amounts and types of fibers than were set forth on the labels thereto affixed." Paragraph Four charges the failure to reveal certain specified information required to be disclosed by Section 4(a)(2) of the act.

Respondent also seeks to raise the affirmative defense provided for in Section 4(a)(2) of the Wool Act which states:

* * * *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

In the matter of *Alscap, Inc., et al.*, Docket 8292 [60 F.T.C. 275], the hearing examiner, in a decision which became the decision of the Commission on February 14, 1962, commencing at page 284 thereof, made the following comments with reference to the foregoing provision as contained in Section 4(a)(2) of the act:

This recognizes that in the manufacturing process there could be a deviation of the actual fiber contents from the percentages stated. The amount of the deviation is not specified and I have indicated above the reason for my opinion

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that a deviation, to be considered as subject to this proviso ought to be less than 5%. Respondents sought to show, by an application to take testimony in Italy that the deviations appearing in this case were due to "unavoidable variations in manufacture," and they contended that in any event they exercise "due care to make accurate the statements" on the tags or labels. They thus sought to read into this proviso not one, but two possible defenses—the first an unavoidable variation in the manufacturing process and the second, an exercise of due care.

A correct interpretation or construction of the proviso is that the possibility of deviation in the manufacturing process exists, that this possibility must be anticipated, that tests or analyses of the fabric, once manufactured, are to be made, and that the consequent and indicated care be exercised to make sure that the labels or brandings state, as accurately as possible, the true wool content.

The examiner further commented:

In the absence of both a deviation such as is contemplated by the statute and a showing of due care in the labeling, the defense is not available. Where the facts of a case are such that it is apparent either one or the other does not exist, it is not necessary and would be a waste of the time and money of all concerned to take evidence in Italy of the premanufacturing, manufacturing, and post-manufacturing procedures in that foreign country.

As a matter of fact, in support of their claims of due care, respondents were unable to show That they subjected the materials to tests to determine whether the statements utilized by them were in fact correct. The statute does not permit blind reliance by persons subject thereto on the conduct of others. Reliance on spotchecks or investigations made by others does not serve to absolve a vendor from erroneous or incorrectly stated representations adopted and consequently made by him.

In the instant case respondent offered no evidence whatsoever as to the care exercised by the manufacturer of the products involved or what would constitute a reasonable manufacturing variance. Respondent made no effort to relate the misbranded blankets back to the manufacturer of the products, to show the manufacturing processes employed by such manufacturer or to establish that such processes could have resulted in manufacturing variations, or for that matter to show what information appeared on his suppliers' labels.

Respondent further contends that he did not intend to violate the act and consequently should be excused.

On this point it is held in *Alscap, Inc., supra*:

Respondents argue that since the manufacturers in Italy and not they placed the tags and labels on the products, they should not be held responsible for the representations contained thereon. While it may be assumed and the evidence suggests that the manufacturers affix the tags and labels at the request of and on the direction of the respondents and thereby became respondents' agents in that respect, it is not material who affixes the tags or labels. Respondents, by utilizing the tags or labels so affixed adopted the representations therein contained and became bound thereby and responsible therefor. To conclude otherwise would make the statute a nullity.

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They claim that they made no effort to falsify the wool content and had no intention to deceive or defraud. These are elements which do not go to the issue. The use in the statute of words like "falsely or deceptively" does not thereby require a showing of intent to deceive in order to make out a violation. The deception or fraud resulting from a mislabeling or misbranding is no different than that resulting in *Ultramares v. Touche*, 255 N.Y. 170. 174 N.E. 441, and other like cases. There is nothing novel about something being fraudulent in law without intent.

In *Smithline Coats and Smithline Coat Co.*, Docket 5560, 45 F.T.C. 79, 87, the Commission made the following statement with respect to a misbranding charge under the Wool Products Labeling Act:

Where misbranding occurs with respect to products subject to the provisions of the act, the law contemplates corrective action by the Commission regardless of whether such misbranding is based upon wilfulness, negligence, or other causes.

The Commission also noted:

The question of intent to violate the law is not at issue in this proceeding inasmuch as the complaint makes no such charge, nor is the proving of "intent" necessary in establishing a case of this type under the Wool Act.

Respondent further questions the sufficiency of the sampling with reference to blankets tested for fiber content. Also, in *Smithline Coats and Smithline Coat Co.*, *supra*, the Commission at 45 F.T.C. 87 made the following comment with reference to such a defense:

It would be an unreasonable burden on those charged with the enforcement of this act and it would likewise make the act ineffective, if sellers charged with misbranding certain wool products could plead as an effective defense the fact that they had sold a large number of other wool products which were not misbranded. The enforcement of this act must necessarily be made on the basis of a sampling of the products of a large number of sellers. If violations are indicated it would obviously be most impractical and unnecessary to test several thousand or even several hundred of the products of a seller in order to establish a violation of the act. The act places the responsibility on the manufacturer and distributor of products subject thereto to label them correctly and in accordance with the terms of said act and further provides that if the seller does not so label the goods he is guilty of an unfair method of competition and an unfair and deceptive act or practice in commerce within the meaning of the Federal Trade Commission Act.

Respondent also urges he has discontinued the practices permanently and in good faith and dismissal of this proceeding is warranted. It is well settled¹ "the discontinuance of a practice found by the Commission to constitute a violation of law does not render the controversy moot. *Federal Trade Commission v. Goodyear Tire & Rubber Company*, 304 U.S. 257 (1938). Nevertheless, where the practice has been surely stopped by the act of the party offending and the

¹ *Ward Baking Company*, Docket 6833, 54 F.T.C. 1919, 1920, and 1921.

object of the proceeding has been attained, no order is necessary, nor should one be entered. *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321 (1944). The cases most commonly dismissed on such grounds are those in which the practice has been long abandoned and/or in which the conditions which led to the violation have so changed as to render a resumption highly unlikely. *Federal Trade Commission v. Civil Service Training Bureau, Inc.*, 79 F. 2d 113 (1935); *National Lead Co., et al. v. Federal Trade Commission*, 227 F. 2d 825 (1955), reviewed on other grounds, 352 U.S. 419 (1957); *Stokely Van Camp, Inc., et al. v. Federal Trade Commission*, 246 F. 2d 458 (1957); In the Matter of *Bell & Howell Company*, Docket No. 6729 (Decided July 19, 1957) [54 F.T.C. 108].

"Dismissal is rarely warranted, however, in cases where a party waits until the Commission has acted and only then discontinues his illegal practice. *Federal Trade Commission v. Wallace*, 75 F. 2d 733 (1935); *Perma-Maid Company, Inc. v. Federal Trade Commission*, 121 F. 2d 282 (1941); *Eugene Dietzgen Co. v. Federal Trade Commission*, *supra*; *Galter v. Federal Trade Commission*, 186 F. 2d 810 (1951). In the *Dietzgen* case, the court's view was that 'parties who refused to discontinue the practice until proceedings are begun against them and proof of their wrongdoing obtained, occupy no position where they can demand a dismissal.' It is apparent that the Commission would have no power at all if it lost jurisdiction every time a practice is halted just as the Commission is about to act or has acted. *Hershey Chocolate Corporation, et al. v. Federal Trade Commission*, 121 F. 2d 968 (1941).

"In any case of the discontinuance of a practice, the Commission is vested with a broad discretion in the determination of whether the practice has been surely stopped and whether an order to cease and desist is proper. *Deer, et al. v. Federal Trade Commission*, 152 F. 2d 65 (1945); *Keasbey & Mattison Co. et al. v. Federal Trade Commission*, 159 F. 2d 940 (1947); *Eugene Dietzgen Co. v. Federal Trade Commission*, *supra*; *Automobile Owners Safety Insurance Company v. Federal Trade Commission* (C.A. 8, May 16, 1958). This discretion is limited only to the extent that it may be abused. *National Lead Co., et al. v. Federal Trade Commission*, *supra*." In the instant case there is insufficient evidence before the hearing examiner to justify the conclusion that discontinuance would not contravene the public interest.

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Final Order

This proceeding is clearly in the public interest and an order to cease and desist from the above-found unlawful practices should issue against the respondent.

ORDER

It is ordered, That respondent Richard S. Marcus, an individual trading as Stanton Blanket Company, or under any other trade name, and respondent's 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 or distribution in commerce of blankets 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. Falsely or deceptively tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to securely affix to, or place on, each such product a stamp, tag or 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 respondent Richard S. Marcus, an individual trading as Stanton Blanket Company or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of blankets or other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character and amount of constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto, or in any other manner.

FINAL ORDER

This matter has been heard by the Commission on the appeal of respondent from the initial decision of the hearing examiner, filed on June 9, 1964. Oral argument of the appeal was held before the Commission on November 17, 1964. Especially since respondent, who is not a lawyer, has appeared throughout this proceeding *pro se*, the Commission has given the most careful consideration to the record of this proceeding, the initial decision of the hearing examiner, and the briefs and arguments of the parties. We are satisfied that respondent has had a fair hearing and full opportunity to conduct his defense;

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that he conducted his defense with vigor and skill throughout the entire proceeding; and that he was not handicapped by not having the aid of counsel.

The record clearly demonstrates that respondent has engaged not only in serious, but in flagrant, violations of the Wool Products Labeling Act; and an order to cease and desist is clearly necessary in the public interest to prevent recurrence of the unlawful conduct. The Commission has concluded that the findings and conclusions of the hearing examiner in the initial decision adequately and correctly dispose of all the issues of this case, and that the cease and desist order contained in the initial decision is appropriate in all respects. Accordingly,

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted by the Commission as its final decision; and that the order contained in the initial decision be, and it hereby is, adopted and issued by the Commission as its final order.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon him, 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

BERNARD MAZUR DOING BUSINESS AS MAJOR HOSIERY
COMPANY