

Consent order requiring a New York City importer and wholesaler of woolen fabrics to cease misbranding such wool products.

Complaint

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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 Rosen Bros. Textile Corp., a corporation, and Philip Rosen and Morris Rosen, 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 of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rosen Bros. Textile Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 3-5 Washington Place, New York, New York.

Respondents Philip Rosen and Morris Rosen are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their address is the same as that of the corporate respondent.

Respondents are engaged in the importation and wholesaling of fabric. They ship and distribute fabric to various customers in the United States.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is 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 of 1939 and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were bolts of fabric which were stamped, tagged, labeled or otherwise identified by respondents as containing "40% acrylic, 40% reprocessed wool, 20% cotton" whereas, in truth and in fact, said wool products contained substantially different fibers and amounts of fibers than as represented.

PAR. 4. Certain of said wool products were further misbranded by

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respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely bolts of fabric with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respect: that samples, swatches or specimens of wool products used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under Section 4(a) (2) of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, in violation of Rule 22 of the aforesaid Rules and Regulations.

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 methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission

by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Rosen Bros. Textile Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 3-5 Washington Place, New York, New York.

Respondents Philip Rosen and Morris Rosen are officers of said corporate respondent. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

Respondents are importers and wholesalers of fabric.

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

ORDER

It is ordered, That respondents Rosen Bros. Textile Corp. a corporation, and its officers, and Philip Rosen and Morris Rosen, 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, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

A. Misbranding such products by:

1. Falsely and deceptively stamping, 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, 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.

3. Failing to affix labels to samples, swatches or specimens of wool products used to promote or effect the sale of wool products, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(a) (2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.

INTERLOCUTORY, VACATING, AND MISCELLANEOUS ORDERS

LEHIGH PORTLAND CEMENT COMPANY

Docket 8680. Order and Opinion, Jan. 5, 1971

Order vacating initial decision and remanding case to hearing examiner for further proceedings.

OPINION AND ORDER VACATING INITIAL DECISION AND REMANDING FOR FURTHER PROCEEDINGS

This matter is before the Commission on notice by respondent of intention to appeal the hearing examiner's "Initial Decision on Motion for Partial Summary Judgment Under Section 3.24 of the Commission's Rules of Practice." Respondent filed with the examiner a motion seeking partial summary decision on certain portions of the complaint under Section 3.24 of the Commission's rules. Complaint counsel thereafter filed an opposition to the motion and a cross motion for summary decision. After oral argument, the hearing examiner filed the document titled as quoted above.

At issue in both respondent's and complaint counsel's motions is whether the commerce requirement of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act has been met with respect to certain acquired corporations. Neither motion seeks summary decision on all issues. Because of the limited scope of the motions, the initial decision does not attempt disposition of the entire proceeding.

The threshold question before the Commission is whether the hearing examiner's initial decision is a proper partial disposition of the issues being adjudicated. We find, for the following reasons, that this partial initial decision has no basis in Rule 3.24 and thus should not have been filed.

Commission Rule 3.24 provides for summary decisions on all or any part of the issues under adjudication. Section (a)(2) provides that summary decision may be rendered where "there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law." In such instances "[A]ny such decision shall constitute the initial decision of the hearing examiner." On the other hand, Section (a)(5) provides that: