

IN THE MATTER OF
SOUNDTRACK CHEVELL INDUSTRIES, INC., ET AL.

Docket 8998. Order, May 11, 1976

Denial of motions to dismiss the complaint as to Lonnie Temple and Gene Temple.

Appearances

For the Commission: *Richard H. Gateley* and *John J. Hemrick*.

For the respondents: *Thompson, Knight, Simmons & Bullion*, Dallas, Tex. for Soundtrack Chevell Industries, Inc., William F. Temple and Helen Temple.

ORDER DENYING MOTIONS TO DISMISS THE COMPLAINT AS TO
LONNIE TEMPLE AND GENE TEMPLE

By order of March 16, 1976, the Commission withdrew this matter from adjudication for settlement purposes as to respondents Soundtrack Chevell Industries, Inc., William F. Temple, and Helen Temple, and directed that complaint counsel file a response to the motions of respondents Lonnie Temple and Gene Temple asking that the complaint be dismissed as to them.

Respondents Lonnie Temple and Gene Temple contend, in letters they have transmitted, that the complaint should be dismissed as to them because they did not exercise control over the corporate respondent's policies, and are not personally responsible for the acts and practices alleged in the complaint. Complaint counsel respond that movants' contention runs counter to the allegations of the complaint that they, in conjunction with other respondents, formulated the policies and directed and controlled the acts and practices of the corporate respondent, raising factual issues which should most appropriately be resolved in the pending administrative hearing.

In an order of April 22, 1975, the Commission denied the motions of Lonnie Temple and certain other respondents to dismiss the complaint as to them. Lonnie Temple's motion, like the ones now before the Commission, asserted that he was not responsible for the acts and practices alleged in the complaint. The Commission stated that nothing raised in the motions before it had altered the Commission's original reason to believe a proceeding as to those respondents would be in the public interest.

Respondent Lonnie Temple has made no further showing, nor has respondent Gene Temple made any showing, sufficient to dismiss the complaint as to them. Their bare allegations, without more, that they did not exercise control over the corporate respondent's policies and are

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not personally responsible for the acts and practices alleged in the complaint, simply raise issues of fact going to the merits of the complaint, to be resolved in the administrative proceeding. *Cf. Koppers Co., Inc.*, 75 F.T.C. 1065 (1969). Furthermore, as the Commission reiterated in *Freight Liquidators*, D. 8937 (Feb. 25, 1975) [85 F.T.C. 274] individuals have been held liable under the Federal Trade Commission Act when they have exercised no control over the policies of the corporate respondent itself, but were involved in implementing an illegal scheme. *See also American Chinchilla Corp.*, 76 F.T.C. 1016, 1025 (1969) (individual respondent who "cooperated in and effectuated the acts, policies and practices of the corporate respondent" held liable). The Commission expresses no opinion at this time, however, as to any liability of movants; any determinations on the merits of the complaint must be based upon the record developed at the administrative proceeding.

Accordingly, the motions to dismiss the complaint as to Lonnie Temple and Gene Temple are denied.

It is so ordered.

IN THE MATTER OF
HANG UPS SPORTSWEAR LTD., ET AL.

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

Docket C-2818. Complaint, May 13, 1976—Decision, May 13, 1976

Consent order requiring a New York City importer of fabrics and manufacturer of women's sportswear, among other things to cease violating the Wool Products Labeling Act by falsely and deceptively labeling and misbranding products; and failing to securely affix labels and/or other means of product identification. The order further requires that purchasers of the misbranded products be informed of the deceptions.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Hang Ups Sportswear Ltd., a corporation, and Bernard Berkoff, Nicholas Lambo, and Robert Berkoff, individually and as officers of said corporation, and Elliot Morris, individually and as a former officer of said corporation, hereinafter sometimes 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 Hang Ups Sportswear Ltd. 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 229 West 36th St., New York, New York.

Respondents Bernard Berkoff, Nicholas Lambo, and Robert Berkoff are officers and Elliot Morris is a former officer of Hang Ups Sportswear Ltd. At all times relevant to the acts and practices hereinafter set forth they formulated, directed and controlled the acts and practices of the corporate respondent. Their business address is the same as that of the corporate respondent.

Respondents are engaged in the business of importing wool products