

Complaint

91 F.T.C.

IN THE MATTER OF
FERRARA IMPORTS, LTD., ET AL.

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

Docket C-2918. Complaint, Mar. 24, 1978—Decision, Mar. 24, 1978

This consent order, among other things, requires a New York City importer and manufacturer of men's clothing to cease misrepresenting, or failing to affix to their products, required fiber disclosure labels. The firm is additionally required to furnish affected customers with a copy of the order.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Melvin Kynter, New York City.*

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 Ferrara Imports, Ltd., a corporation, and Louis Ferrara, individually and as an 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 now 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 Ferrara Imports, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 655 Madison Ave., New York, New York.

Respondent Louis Ferrara is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are engaged in the business of manufacturing men's clothing, including but not limited to men's suits, and the sale and distribution of said items of clothing.

PAR. 2. Respondents, now and for some time last past, have imported for introduction into commerce, introduced into commerce,

sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" as defined therein.

PAR. 3. Certain of said wool products were misbranded by 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 the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were samples, swatches or specimens used to effect sales of certain wool blend men's suits stamped, tagged, labeled or otherwise identified by respondents as "35% wool, 50% polyester and 15% other fibers," whereas, in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by 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 samples, swatches or specimens used to effect sales of wool blend men's suits, with labels on or affixed thereto, and wool blend men's suits, with no 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 is 5 per centum or more, and (5) the aggregate of all other fibers.

PAR. 5. 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 or affecting commerce, under the Federal Trade Commission Act, as amended.

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 New York Regional Office 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, as amended, 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 consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ferrara Imports, 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 655 Madison Ave., New York, New York.

Respondent Louis Ferrara is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

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 Ferrara Imports, Ltd., a corporation, its successors and assigns, and its officers, and Louis Ferrara, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through and corporation, subsidiary, division or any other device, in connection with the introduction or importing for 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 misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products.

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.

It is further ordered, That respondents mail a copy of this order to each of their customers that purchased the wool products which gave rise to this complaint.

It is further ordered, That respondents notify the Commission at least thirty (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 individual respondent named herein promptly notify the Commission of each change in business or employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

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 Order

91 F.T.C.

IN THE MATTER OF

JIM WALTER CORPORATION

Docket 8986. Interlocutory Order, Mar. 30, 1978

Denial of respondent's petition for reconsideration of final order and accompanying opinion, for reopening the proceeding for issuance of an environmental impact statement, for tolling statutory time for filing petition for review, and for oral argument.

ORDER DENYING PETITION FOR RECONSIDERATION AND OTHER
RELIEF

Respondent, Jim Walter Corporation ("Jim Walter") has filed a petition for reconsideration of the Commission's Final Order and accompanying Opinion, for reopening the proceeding to receive certain affidavits, for issuance of an environmental impact statement, for tolling the statutory time for filing a petition for review in the court of appeals, and finally, for oral argument on these issues.

Jim Walter's petition for reconsideration seeks modification of the Commission's Final Order so that it may retain Carey-Canadian Mines, Ltd. ("Carey-Canadian"), a Canadian subsidiary of Panacon Corporation ("Panacon"), engaged in the mining of asbestos fiber, as well as the Philip Carey Division plant at Elizabethtown, Kentucky, which is engaged in the manufacture of urethane foam insulation.

The threshold question which must be faced in connection with a petition for reconsideration filed pursuant to Rule 3.55 is whether the petition raises issues which petitioner had a prior opportunity to address before the Commission. Respondent has been on notice since the commencement of this proceeding that, if liability were found, effective relief might encompass divestiture of all of the Panacon assets acquired by the Celotex Corporation.¹ Allowing respondent yet another opportunity to suggest an appropriate remedy in this case would serve to bifurcate the Commission's adjudicative proceedings into a liability phase, concluding upon issuance of a final order, and a remedy phase, commencing with a petition for reconsideration. Hence, for reasons of administrative efficiency and fairness to all parties, respondent's petition for reconsideration and for reopening of the record may be denied as not in accordance with Rule 3.55.

¹ The Administrative Law Judge's order would have required respondent to divest all of the assets of the Philip Carey Division of Panacon, including the Elizabethtown plant. I.D. P. 64-65. Although the Law Judge did not order divestiture of Carey-Canadian, complaint counsel urged on appeal that the Commission order divestiture of Celotex's new Goldsboro plant, as well as all Panacon assets, including Carey-Canadian. CAB at 26-27. Thus, respondent has been on notice from the onset of this litigation that Carey-Canadian might be divested and of possible obstacles to such divestiture, stemming from Canada's Foreign Investment Review Act, 21-22 Eliz. II, c. 46 (Can.), which was enacted on September 12, 1973, more than ten months prior to the issuance of the complaint.