

Complaint

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IN THE MATTER OF

ARLUCK BLANKET CORP. AND ELMER M. ARLUCK

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5847. Complaint, Feb. 5, 1951—Decision, Aug. 7, 1951

Where a corporation and its president, who controlled its operations, engaged in the introduction into commerce and in the offer, sale, and distribution therein of blankets which were made for them on a contract basis, from materials which they supplied to the manufacturer; and were wool products as defined in the Wool Products Labeling Act—

Misbranded said blankets in that, (1) labeled "100% Wool exclusive of ornamentation," they were not composed entirely of "wool" as defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool"; and (2) they did not have affixed thereto tags or labels showing their constituent fibers and the percentages thereof:

Held, That such acts and practices, under the circumstances set forth, were in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Milton Lerner, of New York City, for respondents.

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 Elmer M. Arluck, an individual, and Arluck Blanket Corp., a corporation, hereinafter referred to as respondents, have violated the provisions of said acts and 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 Elmer M. Arluck is an individual and Arluck Blanket Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 257 Fourth Avenue, New York, N. Y. Respondent Elmer M. Arluck is president of Arluck Blanket Corp. and in control of its operations, and said respondent corporation is in fact an instrumentality through which the said Elmer M. Arluck conducts his business.

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PAR. 2. Subsequent to January 1, 1949, respondents have introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. The said wool products consisted of blankets, which were manufactured for respondents by Clarence Littlefield, doing business as Plymouth Woolen Mill, located at Plymouth, Maine, on a contract basis from materials supplied by respondents.

PAR. 3. Upon the labels affixed to the said blankets appeared the following:

Medical blanket
100% wool exclusive of ornamentation
MFR 7088

PAR. 4. The said blankets were misbranded within the intent and meaning of the said Act, and the rules and regulations promulgated thereunder in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers. In truth and in fact, the said blankets were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool," as those terms are defined in said act. The said articles were further misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of: "wool," "reused wool," and "reprocessed wool," as those terms are defined in said act; each fiber, other than wool, constituting 5 per centum or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 per centum of such total fiber weight.

PAR. 5. The aforesaid acts and practices of respondents as herein alleged were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated August 7, 1951, the initial decision in the instant matter of trial examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, TRIAL EXAMINER

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 on February 5, 1951, issued and subsequently served its complaint in this proceeding upon the respondents, Arluck Blanket Corp. and Elmer M. Arluck, charging the respondents with the use of unfair and deceptive acts and practices in commerce in violation of those acts. After issuance of said complaint and the filing of respondents' answer thereto, hearing was held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named trial examiner therefore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint (none such having been filed by respondents), oral argument not having been requested; and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Arluck Blanket Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 257 Fourth Avenue, New York, N. Y. Respondent Elmer Arluck is president of Arluck Blanket Corp. and in control of its operations, said respondent corporation being in fact an instrumentality through and by which Elmer M. Arluck conducted his business. Said corporation is now in a state of liquidation and although having been inactive in the sale of its products since April or May of the year 1950, yet remains *in esse*.

PAR. 2. Subsequent to January 1, 1949, respondents have introduced into commerce, offered for sale in commerce, and sold and distributed in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein. Said wool products consisted of blankets which were manufactured upon the order, and at the instance, of the respondents by one Clarence Littlefield, doing business as Plymouth Woolen Mill, located at Plym-

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outh, Maine, on a contract basis from materials supplied by respondents to said Littlefield.

PAR. 3. Upon the labels affixed to said blankets appeared the following words and figures:

Medical blanket
100% wool exclusive of ornamentation
MFR 7088

PAR. 4. Said blankets were misbranded within the intent and meaning of said Wool Products Labeling Act of 1939, and of the rules and regulations promulgated thereunder, in that they were falsely and deceptively labeled with respect to the character and amount of their constituent fibers, said products being labeled "100% wool, exclusive of ornamentation." In truth and in fact, the said blankets were not composed entirely of wool, as "wool" is defined in said act, but contained substantial amounts of "reused wool" and "reprocessed wool," as those terms are defined in said act. The said articles were further misbranded in that the labels affixed thereto did not show the percentage of the total fiber weight thereof, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight of: "wool," "reused wool," and "reprocessed wool," as those terms are defined in said act; each fiber, other than wool, constituting 5 per centum or more of such total fiber weight; and the aggregate of all other fibers, each of which constituted less than 5 per centum of such total fiber weight.

CONCLUSION

The aforesaid acts and practices of respondents as herein found were and are in violation of sections 3 and 4 of the Wool Products Labeling Act of 1939, and of the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Arluck Blanket Corp., a corporation, its officers, and Elmer M. Arluck, individually and as an officer of said corporation, their agents, representatives, and employees, directly or through any corporate or other device, or any other name, in connection with the introduction into commerce, or the sale, transportation, or distribution of wool products in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, and the Federal Trade Commission Act, do forthwith cease and desist from misbranding such wool products as defined and subject to the Wool Products Labeling Act of 1939, which contain or purport to contain,

or in any way are represented as containing wool, reprocessed wool, or reused wool, as those terms are defined in said act,

(1) by falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products;

(2) by failing to securely affix to or place on such products a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products exclusive of ornamentation, not exceeding 5 per centum of said weight of: (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage of weight of such fiber is 5 per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of the wool product of any nonfibrous loading, filling, or adulterating matter;

(c) The percentage in words and figures plainly legible by weight of the wool contents of such wool product where said wool product contains a fiber other than wool.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or of the rules and regulations promulgated thereunder.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 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 the order to cease and desist [as required by said declaratory decision and order of August 7, 1951].

Complaint

IN THE MATTER OF

W. H. BRADY & CO., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5298. Complaint, Mar. 27, 1945—Decision, Aug. 8, 1951

Where a corporation and a number of its officers and directors, engaged in the manufacture and interstate sale and distribution of push cards which, bearing appropriate explanatory legends (or spaces therefor), were designed for use in the sale and distribution of merchandise at retail to the public by means of a game of chance, under a plan whereby the purchaser of a push, who, by chance, selected a concealed winning number, secured an article of merchandise, without additional cost at much less than its normal retail price, others receiving an article of less value than the price of the push or nothing for their money—

Sold and distributed such devices to manufacturers of and dealers in candy, cigarettes, clocks, razors, cosmetics, clothing, and other merchandise, assortments of which, along with said devices, were made up by said dealers and exposed and sold by the retailer purchasers to the purchasing public in accordance with the aforesaid sales plan, involving sale of a chance to procure articles at much less than their normal retail price; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale and distribution of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws;

With the result that many members of the public were thereby induced to deal with retailers who thus sold or distributed such merchandise; many retailers were induced to deal with suppliers of the same; and substantial trade was unfairly diverted from certain competitors of such suppliers, who, because of said lottery features and the public policy concerned, did not thus sell or distribute such products and refrained from supplying such devices to others:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. John C. Kelley, of Chicago, Ill., and *Mr. George R. Perrine*, of Aurora, Ill., for respondents.

Taylor, Miller, Busch & Magner, of Chicago, Ill., also represented Richard H. Brady and M. Moliter.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. H. Brady & Co.,

a corporation, Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, Richard H. Brady, William H. Brady, Jr., and Max M. Molitor, individuals and officers of the W. H. Brady & Co., a corporation, all hereinafter referred to as respondents, have violated the provisions of the said 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. Respondent W. H. Brady & Co., hereinafter referred to as corporate respondent, is a corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, having its office and principal place of business located at 510 Water Street, in the city of Eau Claire, Wis.; and respondents Frederick W. Brady, Elizabeth A. Brady, Mildred J. Brady, Richard H. Brady, William H. Brady, Jr., and Max M. Molitor, are officers and directors of said corporate respondent, and they formulate, direct, dictate, and control the acts, practices, and policies of said corporate respondent.

Respondents are now, and for more than 4 years last past have been, engaged in the manufacture of devices commonly known as push cards, and in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of said devices to manufacturers of, and dealers in, various other articles of merchandise.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in Eau Claire, Wis., to purchasers thereof at their respective points of location in various States of the United States, other than the State of Wisconsin and in the District of Columbia. There is now, and for more than 4 years last past has been, a course of trade in such push-card devices by said respondents in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed to said manufacturers and dealers push cards so prepared and arranged as to involve games of chance, gift enterprises or lottery schemes when used in making sales of merchandise to the consuming public. One of said push cards has 60 small partially perforated disks on the face of which is printed the word "Push." concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card bears the legend as follows:

