

IN THE MATTER OF
MILWAUKEE ALLIED MILLS, INC., ET AL.

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

Docket 7112. Complaint, Apr. 9, 1958—Decision, Mar. 23, 1959

Order requiring a manufacturer in Milwaukee, Wis., to cease violating the Wool Products Labeling Act by invoicing and labeling as 70 percent woolen and 30 percent non-woolen fibers, woolen waddings or interlining materials which contained substantially less than 70 percent wool, and by failing to label certain wool products as required.

Thomas A. Zebarth, Esq. for the Commission.

Wickham, Borgelt, Skogstad & Powell, by John J. Ottusch, Esq., of Milwaukee, Wisc., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

On April 9, 1958, the Federal Trade Commission issued its complaint against Milwaukee Allied Mills, Inc., and Mark E. Atwood and William L. Armstrong, individually and as officers of said corporation (hereinafter collectively called respondents), charging them with misbranding and falsely and deceptively invoicing and representing certain wool products in violation of the provisions of the Wool Products Labeling Act of 1939 (hereinafter called the Wool Act), 15 U.S.C. 68, the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served upon respondents.

The complaint alleges in substance that respondents misbranded certain of their wool products by not labeling them as required under the Wool Act and by falsely and deceptively labeling them with respect to the amount of the constituent fibers contained therein in violation of the Wool Act, and that respondents falsely and deceptively invoiced and represented the woolen content of their products in violation of the Act. Respondents appeared by counsel and filed an answer admitting the corporate, commerce, competition, and representation allegations of the complaint, as well as the misbranding by failure to label, stamp or tag their products as required under §4(a)(2) of the Wool Act, but denying that they falsely or deceptively labeled or tagged such prod-

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ucts, or in any other way misrepresented such products, with respect to the amount of the constituent fibers contained therein.

Pursuant to notice, hearings were thereafter held in Milwaukee, Wisconsin, and Washington, D.C., before the undersigned hearing examiner duly designated by the Commission to hear this proceeding. All parties were represented by counsel, participated in the hearings, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons therefor. Both parties waived oral argument, and pursuant to leave granted, thereafter filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.¹

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of Respondents

The complaint alleged, respondents admitted, and it is found that Milwaukee Allied Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Mark E. Atwood and William L. Armstrong are president and secretary-treasurer, respectively, of said corporation. Said individual respondents cooperate in formulating, directing, and controlling the acts, policies, and practices of said corporation. Respondents have their office and principal place of business at 2322 Clybourn Street, Milwaukee, Wis.

II. Interstate Commerce and Competition

The complaint alleged, respondents admitted, and it is found that, subsequent to the effective date of the Wool Act, they have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, and offered for sale in commerce, as "commerce" is defined in the Act and the Wool Act, wool products, as "wool products" are defined in the Wool Act. Respondents in the course and conduct of their business were and are in substantial competition in com-

¹ 5 U.S.C. 1007(b).

merce with corporations, firms and individuals likewise engaged in the manufacture and sale of woolen waddings or interlining materials.

III. The Unlawful Practices

A. *Misbranding of Wool Products*

1. Stamps, Tags, and Labels Required by the Wool Act

Respondents are engaged in the manufacture and sale of woolen waddings or interlining materials. The complaint alleged, respondents admitted, and it is found that certain of these wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of §4(a)(2) of the Wool Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

2. False and Deceptive Stamping, Tagging or Labeling

The complaint also alleged that respondents misbranded certain of their wool products in violation of §4(a)(1) of the Wool Act by falsely and deceptively labeling or tagging them with respect to the amount of the constituent fibers contained therein. The complaint further alleged that respondents, in violation of §5 of the Act, by means of invoices and oral representations, falsely and deceptively misrepresented the woolen content of their products. These alleged violations of the two Acts are considered together inasmuch as they involve the same facts and evidence with respect to the woolen content of respondents' products.

The complaint alleged and respondents admitted that they labeled and tagged their waddings as containing 70 percent woolen and 30 percent nonwoolen fibers. The complaint also alleged and respondents admitted that they invoiced and orally represented said products as containing 70 percent woolen and 30 percent nonwoolen fibers. Thus the basic issue is whether or not such tags and representations were true.

In the manufacture of their product, respondents purchase from two sources of supply clippings or scraps of cloth in 1,000-pound bales, which are supposed to contain approximately 70 percent wool and 30 percent nonwool. Respondents run this material through a machine known as a rag picker, which reduces it to the original cloth fibers but does not effectively mix or stir the fibers so as to produce an homogenous product containing uniform percentages of wool and nonwool fibers. This shredded material is then placed into another machine called a garnet

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which wads it. Facing material is then added. The final product is sold to and used by others as a wadding or interlining material for jackets and similar types of products. The garnet like the rag picker does not mix the fibers so as to produce an homogenous result with uniform percentages of woolen and nonwoolen fiber.

As previously found, respondents, admitted that they labeled such wadding as containing 70 percent wool and 30 percent nonwool, and also invoiced and orally represented such wadding as having such woolen and nonwoolen content. Two samples of respondents' wadding were secured at random from two different customers of respondents. Two tests of each sample were made by a chemist employed by the Commission to ascertain the woolen content thereof. Respondents conceded the expert qualifications of the chemist, who testified that the tests conducted were standard and recognized tests for ascertaining the wool and other fiber content of such materials. The two tests of one sample revealed a woolen content of 34.5 and 34.8 percent, respectively. The two tests of the other sample revealed a woolen content of 32.4 and 31.8 percent, respectively. It is apparent from these tests that the woolen content in each case did not amount even to one-half as much as represented by respondents.

Respondents argue that the tests were inadequate both because of the limited number of samples and the manner in which they were made. Having conceded the expert qualifications of the chemist, and in the light of her testimony with respect to the nature, type and sufficiency of her tests, this contention is without merit. Respondents also rely upon the proviso contained in §4(a)(2)(A) of the Wool Act as a defense to their misbranding and misrepresenting the woolen content of their products. The proviso reads as follows:

... 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.

Respondents contend both that they exercised due care and that the deviation resulted from unavoidable variations in manufacture. The record establishes the contrary. As previously found, respondents secured their raw materials from two sources of supply. Respondents requested these suppliers to label such clippings as to woolen content and said suppliers refused to do so.

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In addition thereto, one of the suppliers furnished respondents with letters stating that the cuttings contained 70 percent wool and 30 percent nonwool fibers, approximately 5 percent more or less, and also specifically stating that this was not to be construed as a warranty of any kind. Section 9(a) of the Wool Act sets forth the type of guaranty in writing available to respondents as a defense for misbranding. It is apparent that respondents have received no such guaranty from either supplier. In fact, the refusal of such suppliers either to label or warrant the woolen content of their clippings should have warned respondents, in the exercise of due care, that such supplies might well not contain the amount of wool respondents were representing their product to contain.

Even assuming the clippings were originally 70 percent wool, respondents concede that the method of manufacturing used by them might frequently result in substantial batches of wadding containing far less than 70 percent wool, because the machines used do not mix the fibers into an homogenous mass and therefore wadding resulting from a 1,000-pound bale containing 30 percent nonwool might well contain large portions having little or no wool content, and certainly substantially less than 70 percent. Indeed, respondents base their contention that such variations were unavoidable upon this fact. However, they testified that there are machines available which would bring about an adequate mixture resulting in an homogenous product containing the same percentages of wool and nonwool as the raw material. They stated that they did not use this machine because it would have increased their costs of production. Patently this cannot be characterized as an unavoidable variation in manufacture. Further, it demonstrates that respondents not only did not exercise due care in labeling and representing the woolen content of their products, but in fact knew that substantial percentages of their wadding must have contained less than 70 percent wool.

In support of their "due care" defense, respondents also testified that they previously had conducted periodic chemical tests of their own to determine the woolen content of their product. Again for economic reasons, these tests had been discontinued by respondents for almost a year prior to the hearings herein. In addition, their tests when conducted were done so improperly in that they failed to exclude the acetate content of the wadding, thereby substantially increasing the resulting percentage of "wool." Even with this erroneously enhanced percentage, on oc-

casian their tests resulted in a finding of substantially less than 70 percent wool. Because of the knowledge derived from their own chemical tests as well as the knowledge that their method of manufacture resulted in substantial quantities of wadding containing much less than 70 percent wool, respondents' "due care" defense is without merit.

For the reasons set forth above with respect to due care and unavoidable variations, respondents' reliance upon the *Beacon* decision² is misplaced. In that case the Commission found the respondent had met the terms of the proviso to §4(a)(2)(A), hereinabove quoted. The Commission held that:

... It is and for many years has been the respondent's policy to do everything possible and to take every precaution to see that its blankets contain the percentages of wool and other fibers claimed for them, and it appears that, insofar as this result can be obtained, the respondent has been successful in these efforts. It is true that, due to unavoidable variations in the mechanical manufacturing process, and despite the exercise of due care, swatches of some of the respondent's blankets have been found to contain slightly less than the percentages of wool fibers called for by the labels affixed to such blankets, but these variations apparently represent rare and isolated mistakes against which the respondent cannot reasonably be expected to guarantee. . . .

A mere reading of the foregoing quotation demonstrates its inapplicability to the facts herein.

A preponderance of the reliable, probative, and substantial evidence in the entire record convinces the undersigned and accordingly it is found that respondents misbranded certain of their wool products with respect to the amount of the constituent fibers contained therein, in violation of §4(a)(1) of the Wool Act and the Rules and Regulations promulgated thereunder, and falsely and deceptively invoiced and represented their products with respect to woolen content, in violation of §5 of the Act.

B. *The Effect of the Unlawful Practices*

The use by respondents of the false, deceptive and misleading statements and representations in invoices, shipping memoranda, orally or in any other manner, hereinabove found, has had and now has the tendency and capacity to cause manufacturers purchasing respondents' products and relying upon such false statements and representations to misbrand products made from said products of respondents.

² *Beacon Manufacturing Co.*, 46 F.T.C. 1073 (1949).

