

Decision

IN THE MATTER OF
TOP FORM MILLS, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7166. Complaint, May 29, 1958—Decision, Dec. 2, 1958

Consent order requiring manufacturers of women's slips and other wearing apparel in New York City to cease setting out excessive and fictitious amounts as "Value" and "Special purchase" in advertising mats and other promotional material supplied to retailers and dealers, on tickets attached to the garments prior to sale, and in advertisements in *Vogue*, *Harpers Bazaar*, and *Mademoiselle* magazines.

Mr. Morton Nesmith and Mr. John J. Mathias, for the Commission.

Mr. David Sklaire of Ostrow, Goldman & Sklaire, of New York, N.Y., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars. In accordance with the stipulation of the parties, the title of this proceeding has been amended by deleting therefrom the following language: "also known as SEYMOUR TOPOLOFF."

On October 7, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents signatory thereto, their counsel, and counsel supporting the complaint, under date of September 30, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Top Form Mills, Inc., 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 38 East 30th Street, New York, N. Y. Respondents Emanuel Kitrosser, also known as Manny Kay, and Seymour L. Topping, are officers of said corporation. These individual respondents formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 29, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

Seymour L. Topping has been referred to in the complaint as "also known as Seymour Topoloff." Said statement has been omitted from this agreement and the order contained herein for reasons stated in a letter from David Sklaire, attorney for respondents, dated September 3, 1958. Said letter is attached hereto and incorporated by reference into this agreement.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to

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respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each of the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the public interest; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:.

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It is ordered, That respondents, Top Form Mills, Inc., a corporation, and its officers, and Emanuel Kitrosser, also known as Manny Kay, and Seymour L. Topping, individually and as officers of said corporate respondent, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or by implication:
 - a. That a certain amount is the regular and usual retail price of merchandise when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail;
 - b. That the value of merchandise is any amount which is, in fact, in excess of the actual market value of said merchandise.
2. Placing in the hands of retailers and dealers, a means and instrumentality by and through which they may deceive and mislead the purchasing public, concerning merchandise in the respects set out in paragraph 1 above.

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DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 2d day of December 1958, become the decision of the Commission; and, accordingly;

It is ordered, That the above-named respondents 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 the order to cease and desist.

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IN THE MATTER OF
AMICALE YARNS, INC., ET AL.

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

Docket 7170. Complaint, June 9, 1958—Decision, Dec. 2, 1958

Consent order requiring distributors in New York City to cease violating the Wool Products Labeling Act by labeling and invoicing as "100% Cashmere," yarn which contained substantially less than 100% cashmere fibers, and by failing to label certain yarns as required.

Mr. John J. Mathias for the Commission.

Rothstein & Korzenik, by *Mr. Harold Korzenik*, of New York, N.Y., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, and with the use of the false, misleading and deceptive statement, in sales invoices, that said products were composed of 100% cashmere fibers, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

After the issuance of the complaint, respondents, their counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Amicale Yarns, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 511 Fifth Avenue, New York, N.Y., and that individual respondent Gregory Schlomm is an officer of the corporate respondent and formulates, directs and controls the acts, practices and policies thereof, his address being the same as that of the corporate respondent.

All parties to the agreement recommend therein that the complaint, insofar as it relates to respondents Philip Brenner and Emanuel Mendelkern (erroneously referred to in the complaint as Emmanuel Mendelkern), be dismissed because their connection with the respondent corporation has been only in a professional

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capacity, and neither of said respondents has any participation or control in the formulation or direction of the corporate respondent.

The agreement further states that the practices charged in the complaint involve some woolen weaving yarn imported by respondents from Japan in 1955 and 1956.

The agreement provides, among other things, that respondents signatory thereto admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order to cease and desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondents Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection or through any corporate or other device, in connection with the introduction into commerce, or the

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offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of yarn or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix or place on each such product 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 product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

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

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Amicale Yarns, Inc., a corporation, and its officers, and Gregory Schlomm, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarns or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, the fibers of which their products are composed, or the percentages or amounts thereof, in sales invoices, shipping memoranda, or in any other manner.

It is further ordered, That the complaint herein, insofar as it relates to respondents Philip Brenner and Emanuel Mendelkern, be, and the same hereby is, dismissed without prejudice to the

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right of the Commission to take such action in the future as the facts may then warrant.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed October 17, 1958, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, service of which was completed on November 30, 1958; and

The respondents, by motion filed November 5, 1958, having requested that the initial decision be amended to include a statement that the practices charged in the complaint involve some woolen weaving yarn imported by the respondents from Japan in 1955 and 1956; and

Counsel supporting the complaint having filed answer stating that he does not oppose such motion, and it appearing that said requested statement was included in the agreement of the parties as a material part thereof and that its omission from the initial decision results in an incomplete recitation of said agreement, and the Commission being of the opinion that the omission should be supplied:

It is ordered, That the initial decision be, and it hereby is, amended by inserting between the fourth and fifth paragraphs thereof the following:

"The agreement further states that the practices charged in the complaint involve some woolen weaving yarn imported by respondents from Japan in 1955 and 1956."

It is further ordered, That the initial decision as so amended shall, on the 2d day of December 1958, become the decision of the Commission.

It is further ordered, That the respondents, Amicale Yarns, Inc., a corporation, and Gregory Schlomm, individually and as an officer of said corporation, 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 the order contained in the aforesaid initial decision.

