

It is 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 the order to cease and desist.

IN THE MATTER OF

JULIAN D. GROLLNEK, ET AL., TRADING AS
G. & G. SPORTSWEAR CO., ETC.

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

Docket 7607. Complaint, Oct. 13, 1959—Decision, Feb. 13, 1960

Consent order requiring Los Angeles manufacturers to cease violating the Wool Products Labeling Act by labeling as "60% wool, 40% rayon," women's suits which contained substantially less than 60% wool, by failing to attach labels to the skirts of two-piece suits, and by failing in other respects to comply with labeling requirements.

Mr. Charles Donelan for the Commission.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 13, 1959, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On December 3, 1959, the respondents entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement

Order

and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Julian D. Grollnek and Mary H. Grollnek are individuals and co-partners trading as G. & G. Sportswear Co., G. & G. Coat Co. and Mary Hayes of California, with their office and place of business located at 127 East Ninth Street, Los Angeles, California.

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 the respondents, Julian D. Grollnek and Mary H. Grollnek, individually and as co-partners, trading as G. & G. Sportswear Co., G. & G. Coat Co. and Mary Hayes of California, or under any other name, directly or through any corporate or other device in connection with the introduction or manufacture for introduction into commerce, or the 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 women's suits 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:

A. Misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to 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 products, 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 weight of such wool products of any non-fibrous 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 en-

gaged 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.

3. Failing to attach a stamp, tag, or label, or other means of identification containing the information required under section 4(a)(2) of the Wool Products Labeling Act and the Rules and Regulations thereunder to each unit of multiple piece garments sold in combination, as required by Rule 12 of the aforesaid Rules and Regulations.

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 13th day of February, 1960, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

KULIN WASTE CO. ET AL.

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

Docket 6983. Complaint, Dec. 13, 1957—Decision, Feb. 17, 1960

Order requiring the former vice president of a Worcester, Mass., corporate manufacturer to cease violating the Wool Products Labeling Act by identifying wool stock in invoices and shipping memoranda as "90% wool, 5% rayon and 5% other fibers" when the wool content was reprocessed wool and not "wool" as defined by the Act.

The corporate respondent and two other officials accepted a consent order on October 18, 1958, 55 F.T.C. 604.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Charles W. O'Connell for the Commission.

Mr. Seymour Weinstein, of Worcester, Mass., for respondent.

FINDINGS AS TO THE FACTS, CONCLUSION AND ORDER

The complaint in this matter charged the respondents with violation of the Wool Products Labeling Act and the Rules and Regu-

lations promulgated thereunder in connection with the sale of wool stock. Respondents Kulin Waste Co., Louis Kulin and Abraham Kulin elected to dispose of the proceeding as to them by means of an agreement for a consent order, and on August 27, 1958, an initial decision as to these respondents was issued by the hearing examiner, such decision, on October 18, 1958, having become the decision of the Commission. Thereafter, the case proceeded in regular course as to respondent Michael Silver, a number of hearings being held and a substantial volume of evidence received both in support of and in opposition to the complaint. In a second initial decision filed May 29, 1959, the hearing examiner held that, as to respondent Silver, the complaint should be dismissed for lack of public interest.

The Commission has considered cross-appeals from the initial decision filed by counsel supporting the complaint and by respondent Michael Silver, *pro se*, briefs submitted and the entire record, and has determined that the appeal of counsel supporting the complaint should be granted and that of respondent Michael Silver denied and that the initial decision should be vacated and set aside. The Commission further finds that this proceeding is in the public interest and now makes this its findings as to the facts, conclusion drawn therefrom and order to cease and desist, which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision:

FINDINGS AS TO THE FACTS

1. Respondent Michael Silver, hereinafter referred to as "respondent," is an individual residing at 15 Claridge Drive, Worcester, Massachusetts. During the period pertinent to this proceeding, he was vice president and general manager of Kulin Waste Co., 31 Mulberry Street, Worcester, Massachusetts. Respondent actively participated in the formulation, direction and control of the acts and practices of this company.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, Michael Silver, individually and as an officer of Kulin Waste Co., manufactured for introduction into commerce, offered for sale, and sold wool products in commerce, as "commerce" and "wool products" are defined in the Wool Products Labeling Act.

3. Certain of said wool products, namely wool stock, have been misbranded in violation of Section 4(a)(1) of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely or deceptively identified in invoices and shipping memoranda as "90% wool, 5% rayon and 5% other

Order

56 F.T.C.

fibers" when in fact the wool content of such stock was not "wool" as defined in said Act but was reprocessed wool.

4. Certain of said wool products, namely wool stock, have been misbranded 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 and the Rules and Regulations promulgated thereunder.

5. In the course and conduct of his business, respondent is in competition, in commerce, with firms and individuals likewise engaged in the sale of wool stock.

CONCLUSION

The acts and practices of respondent Michael Silver constituted misbranding of wool products and were in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondent, Michael Silver, in connection with the introduction or manufacture for introduction into commerce, or the 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 wool stock or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, 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, 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 contained or included therein;

2. Falsely or deceptively identifying such products as to the character or amount of the constituent fibers contained or included therein on sales invoices or shipping memoranda applicable thereto;

3. 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:

(a) The percentage of the total fiber weight of such wool product exclusive of ornamentation not exceeding five per centum 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 per centum or more and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total 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 product 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 respondent, Michael Silver, shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

OPINION OF THE COMMISSION

By TATT, *Commissioner*:

The complaint in this case charges the corporate respondent, Kulin Waste Co., and Louis Kulin and Abraham Kulin, individually and as officers of said respondent, and Michael Silver, individually and as a former officer, with violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder. Specifically, the charge is that the respondents engaged in misbranding woolen stock sold by them by failing to affix to this product stamps, tags or labels showing the fiber contents as required by Section 4(a)(2) of the Act and by falsely representing the fiber contents of the product on invoices and shipping memoranda.

Respondents Kulin Waste Co., Louis Kulin and Abraham Kulin executed an agreement containing a consent order to cease and desist and, on August 27, 1958, an initial decision accepting that agreement was filed. That initial decision became the decision of the Commission on October 18, 1958.

Thereafter, extensive hearings were held as to respondent Michael Silver, culminating in a second initial decision filed May 29, 1959, which would dismiss the complaint as to him. Counsel supporting the complaint has appealed from that initial decision, as has respondent Silver. We have considered these cross-appeals separately on the basis of the whole record, including briefs of counsel supporting the complaint and Michael Silver, *pro se*.

The hearing examiner would dismiss the complaint on the grounds that respondent Silver's connection with Kulin Waste Co. terminated some six months prior to issuance of the complaint, and since there is nothing in the record to show Mr. Silver's present activities there is no public interest in issuing a cease and desist order against him.

That termination of illegal practices prior to issuance of a complaint does not in every case warrant dismissal of the proceeding is so well established that detailed consideration of the authorities therefor is not deemed warranted in this opinion. It suffices to note that in the circumstances obtaining here we regard as applicable the principles laid down in *Sheffield Merchandise, Inc.*, Docket 6627, decided July 7, 1958, and cases therein cited. And see *Ward Baking Company*, Docket 6833, decided June 23, 1958.

Respondent Silver, as the hearing examiner found, was more than a mere employee, being vice president and general manager of the corporate respondent, having a substantial financial interest in the company, and having a considerable measure of authority over the company's operations and practices, particularly in the absence of the president. Moreover, the record discloses that Mr. Silver was one of the individuals who actively participated in the formulation, direction and control of the acts and practices of Kulin Waste Co., including those practices alleged to be illegal in the complaint. There is no evidence as to Mr. Silver's present activities, nor does the record clearly disclose that he has disposed of his substantial financial interest in the corporation. Likewise, there are no assurances, formal or otherwise, that Mr. Silver surely will not engage in the questioned practices in the future. Finally, there is no showing here of "unusual circumstances which in the interests of justice require" dismissal of the proceeding upon the ground of abandonment or discontinuance. Thus, the appeal of counsel supporting the complaint should be granted.

As to the appeal of respondent, it essentially is from the unfavorable findings of the hearing examiner that Mr. Silver has violated the Wool Products Labeling Act, as charged in the complaint.

We consider first the argument that samples of wool stock tested and found to have been misbranded were obtained at the Franklin Woolen Mills, in Franklin, Massachusetts, from bales of stock shipped by Kulin Waste Co., from its place of business in Worcester, Massachusetts, the contention being that such samples were not shipped in commerce and, therefore, Commission jurisdiction was not established in this case.

It is true, as respondent asserts, that the tested samples were

taken from bales of wool stock shipped from Worcester to Franklin, both in Massachusetts. It appears further, however, that the wool stock had been sold by Kulin Waste Co., of Worcester, Massachusetts, to Stamina Industries, Inc., of Forestdale, Rhode Island, with shipment being made to Franklin Woolen Mills, an associate corporation of Stamina, where the stock was to be processed. This is established by invoices and other sales memoranda in the record, and clearly subjects the products and the respondents to the Commission's jurisdiction. The fact that the original shipment was intrastate is wholly immaterial.

Respondent next urges that the wool stock involved is not a "wool product" within the meaning of the Wool Products Labeling Act. This is true, he says, because the Act does not mention wool stock as such, but, on the contrary, is limited in coverage to finished items such as gloves, hosiery, other wearing apparel and blankets. Furthermore, he argues, the contents of the material cannot, in any event, be "reprocessed wool," as urged by counsel in support of the complaint, because it is not the result of a reduction of a woven or felted wool product into a "fibrous state," within the meaning of the Act.

Kulin Waste Co. buys from fabric and garment manufacturers waste, clippings and unused fabrics which it picks and blends. The resultant product is baled and sold to spinning mills. There is no question but that the product when sold, in many instances, was not stamped, tagged or labeled in accordance with the requirements of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder; and the record establishes that the product was referred to in respondent's invoices and shipping memoranda as "90% wool, 5% rayon and 5% other fibers." Actually the wool content of respondent's stock was not "wool" as defined in the Act, but was "reprocessed wool."

Section 2(b) of the Act defines "wool" as follows:

(b) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

The wool stock here involved, as we have found, was reclaimed from waste, clippings and unused fabrics which were woven and felted prior to processing and resale by Kulin Waste Co. The resultant product was not "fiber from fleece * * * which has never been reclaimed * * *." It is clear, therefore, that the designation "90% wool" appearing on invoices and shipping memoranda as descriptive of the fiber content of such product was false.

