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March 26, 2012

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex Q)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Attn: Robert M. Frisby, Esquire

Re: Wool Rules, 16 C.F.R. Part 300, Project No. P124201

Dear Sir,

The following comments are respectfully submitted pursuant to a request published by the Federal Trade Commission ("FTC") in the Federal Register (77 Fed. Reg. 4498) on January 30, 2012.

Under the Wool Products Labeling Act ("Wool Act"), products containing wool must be labeled to show their fiber content. *See* 15 U.S.C. § 68b. Further, a wool product is considered misbranded under the Wool Act if its label does not show the correct weight percentages of its fiber content. Although the Wool Act and the regulations promulgated thereunder do not provide for any tolerance for the content of wool products, the Wool Act states that variations from stated fiber content will not be considered mislabeling if the "deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements" on the label. *See* 15 U.S.C. § 68b(a)(2)(A).

Wool products comprising a single fiber type are the most readily identifiable by current fiber identification methodologies, especially if their morphology has not been altered by chemical treatments. By contrast, however, blended wool products made of different fiber types can present greater difficulties for accurate and consistent identification, particularly when the different fiber types in the blend have either a similar or indistinct appearance. This is so because current identification methodologies (except for DNA testing) all rely on subjective judgments made by analysts through microscopic inspection of fibers. There are also unavoidable variations in the blending and spinning of the yarns that can affect the accuracy and consistency of fiber identification results. Moreover, dyeing and chemical treatments for making

such products machine-washable can alter the appearance of wool fibers so as to render them no longer identifiable.

By way of example, in 2005, twenty-eight testing laboratories from around the world agreed to participate in a "round trial" sponsored by the Cashmere and Camel Hair Manufacturer's Institute ("CCMI") in order to ascertain their accuracy in detecting the quantity of fine animal hair present in six fiber or yarn samples of known composition. CCMI tabulated the results, sample-by-sample, lab-by-lab, and, for the purposes of this analysis, assigned a "pass" or "fail" grade based on correct identification within three percentage points. This is say, for a fiber present as 50% of the total fiber composition, a lab reporting from 47% to 53% was deemed as having passed the test. For samples that contained 80% cashmere and 20% wool, only 13 of 28 labs correctly identified the fiber composition within the 3% tolerance. Of the 15 failing labs, five were off by ten or more percentage points. For samples that contained 50% cashmere and 50% wool, only 12 of 28 labs correctly identified the fiber content of this sample. Of the 16 that failed this test, 11 were off by ten or more percentage points. In both of these cases, more than 50% of the labs failed to identify the fiber content of samples. Further, it is notable that the round trial was conducted on samples that had not been chemically treated.

As a result of the limitations on fiber identification methodologies, several importers and distributors of blended wool hand-knitting yarns have recently been the targets of abusive lawsuits by competitors and others in the yarn trade who have brought claims for false advertising under the Lanham Act based on nothing but a handful of fiber identification tests in which the reported fiber contents are at variance with the labeled contents. These lawsuits have imposed significant unnecessary costs on those targeted by these abusive lawsuits, which costs could have been avoided if there were an efficient method for importers and distributors to ensure their compliance with the Wool Act that also served as protection from such abusive litigation. Moreover, these abusive lawsuits have been damaging not only to the companies which have been targeted by them but also to the confidence of consumers who have been left confused and unable to trust any label regardless of truth and content.

The Wool Rules should provide for a label certification program in which importers and distributors of wool products would have the accuracy of their product labels certified by the FTC as compliant with the Wool Act, and that this certification would serve as a complete defense to false advertising claims under the Lanham Act as well as state law counterparts. Such a label certification program would allow an importer or distributor of a wool product to establish the accuracy of its product labels either by the submission of fiber testing or by other means, such as through the submission of supply-chain documentation, sufficient to establish the fiber contents of the wool product and the accuracy of the label. Such a certification program need only be voluntary, and could be funded entirely by user fees. With such a program in place, the FTC would be able to further its mission of protecting the consumer while affording importers and distributors protection from abusive litigation.

In addition to a label certification program, the Wool Rules should also specify that wool products may be labeled in accordance with their fiber contents known as of a particular point

during the manufacture thereof, and that labeling a wool product in this manner is permissible under the Wool Act. Similar to labeling practices applicable to certain kinds of prepared foods in which the pre-cooked weight of the food item may be used (e.g., a Quarter Pounder), the Wool Rules should permit the fiber contents of wool products to be listed according to their weight percentages before spinning and/or before dyeing and/or chemical treatment, provided that the label so indicates. For example, a label could indicate "spun with" before listing the percentages of fibers, or that the stated percentages are "before dyeing." By permitting wool products to be labeled in accordance with their fiber contents known as of a particular point it its manufacture, variances in fiber content resulting from subsequent manufacturing steps, like the loss of fat in a cooked hamburger, can be accommodated.

Thank you for this opportunity to comment on this important matter.

Respectfully submitted,

Joshua R. Slavitt