the order served upon them, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

VERRAZZANO TRADING CORPORATION TRADING AS LAN ETRURIA, ET AL.

ORDER OF DISMISSAL, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION, THE WOOL PRODUCTS LABELING AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket 8801. Complaint, Oct. 17, 1969—Decision, Apr. 13, 1971*

Order dismissing the complaint which charged a New York City importer and seller of Italian woolen and textile fabrics with misbranding, falsely invoicing, and deceptively guaranteeing its wool and textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Verrazzano Trading Corporation, a corporation, trading under its own name or as Lan Etruria; Francesco Datini, Inc., a corporation, and Walter Banci, individually and as agent for said corporations, and for Lanificio Tuscania, a foreign entity which trades under its own name and as Lan Etruria, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification 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 Verrazzano Trading Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, trading under its own name or as Lan Etruria, with its office and principal place of busi-

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*Reporting as amended by Hearing Examiner's order of July 16, 1970, by amending Paragraph One.

ness located in Room 1500, Two Pennsylvania Plaza, New York, New York.

Respondent Francesco Datini, 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 in Room 1500, Two Pennsylvania Plaza, New York, New York.

Individual respondent Walter Banci is agent for the aforesaid corporations, and in such capacity is authorized to bind said corporations in their names and in the names of their officers. His office and principal place of business is the same as that of the corporate respondents.

Respondents are engaged in the business of importation from Italy and sale of woolen and textile fabrics to customers in various States of the United States. Respondent Walter Banci is also agent for Lanificio Tuscania, a foreign entity which trades under its own name and as Lan Etruria, and in such capacity is authorized to bind said foreign entity and its principals.

PAR. 2. Respondents, now and for some time last past, have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in said Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were woolen fabrics stamped, tagged, labeled, or otherwise identified as containing "20% Linen, 70% Reprocessed wool, 5% Nylon and 5% Other Fibers," whereas in truth and in fact, such fabrics contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents 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 of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were woolen fabrics without labels or with labels on or affixed thereto, which failed to disclose the percentage of the total fiber weight of the said wool products, 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 when said percentage by weight of such fiber was five per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The respondents furnished false guaranties that certain of their said wool products were not misbranded when respondents in furnishing such guaranties had reason to believe that the wool products so falsely guarantied might be introduced, sold, transported or distributed in commerce, in violation of Section 9(b) of the Wool Products Labeling Act of 1939.

PAR. 6. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents are now and for some time last past have been engaged in the advertising, offering for sale, sale, and distribution of certain products, namely fabrics. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. Respondents in the course and conduct of their business have made statements on invoices to their customers, misrepresenting the fiber content of certain of their products.

Among such misrepresentations, but not limited thereto, were statements setting forth the fiber content of such products as "20% Linen, 70% Reprocessed wool, 5% Nylon and 5% Other Fibers," whereas, in truth and in fact, the said products contained substantially different amounts and types of fibers than represented.

PAR. 9. The acts and practices of respondents, as alleged in Paragraph Eight above, were, and are, all to the prejudice and injury of the public, and constituted, and now constitute, unfair and de-

ceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 10. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 11. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely fabrics, which contained substantially different amounts and types of fibers than as represented.

PAR. 12. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely fabrics, without labels or with labels on or affixed thereto which failed:

1. To disclose the true generic name of the fibers present.

2. To disclose the true percentage of the fibers present by weight.

PAR. 13. The acts and practices of respondents as set forth above in Paragraphs Eleven and Twelve were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce, under the Federal Trade Commission Act.

Mr. Thomas J. Kerwan and *Mr. Arthur B. Patrizio* supporting the complaint.

Pavia & Harcourt, New York, N.Y., by *Mr. David A. Botwinik* and *Mr. Walter T. Cassidy* for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER

NOVEMBER 2, 1970

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PRELIMINARY STATEMENT

The complaint in this proceeding was issued by the Federal Trade Commission on October 17, 1969, and was duly served on respondents on October 31, 1969.[1] The complaint charges respondents with misbranding wool and textile fiber products, falsely invoicing such products, and falsely guaranteeing wool products, in violation of the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act, and the Federal Trade Commission Act.

After complaint counsel filed a more definite statement concerning the allegations of the complaint, pursuant to the examiner's order of November 26, 1969, each of the respondents filed answer on January 5, 1970, admitting in part and denying in part the various factual allegations of the complaint, essentially denying any violation of law, and alleging as an affirmative defense that respondents

[1] The complaint was amended during the hearings to clarify the status of Lanificio Tuscania by eliminating from the caption and from the preamble, references indicating that it was a trade name used by respondent Verrazzano Trading Corporation, and by adding an allegation that Lanificio Tuscania is an Italian entity for which respondent Walter Banci is an agent. The amendment also added an allegation that both Verrazzano and Lanificio Tuscania traded as Lan Etruria. (See Order Confirming Amendment of Complaint, filed July 17, 1970.)

"acted with due care" and that "any violation charged in the complaint is the result of unavoidable manufacturing variations." In their answers, respondents also contended, that "[i]n relation to the total volume of respondents' business the allegations charged in the complaint are not substantial and thus, this proceeding is not in the public interest as required by Sec. 5(b) of the Federal Trade Commission Act."

Following a prehearing conference on January 22, 1970, 12 days of hearings were held between April 14, 1970, and July 31, 1970, a series of intervals between hearings having been necessitated by a variety of circumstances, including a postponement occasioned by difficulties in arranging for the testimony of a witness from Italy on behalf of respondents. (See Commission Order Suspending Hearings filed June 15, 1970.)

The record consists of 1,271 pages of trial transcript and approximately 75 physical exhibits and documentary exhibits.

At the hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. Such testimony and evidence have been duly recorded and filed. The parties were represented by counsel and were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues.

After the presentation of evidence, proposed findings of fact and conclusions of law and a proposed form of order, accompanied by supporting briefs, were filed by counsel supporting the complaint and by counsel for respondents. Reply briefs were also filed by counsel for both parties. Those proposed findings that are not adopted herein, either in the form proposed or in substance, are rejected as lacking support in the record or as involving immaterial matters.

Having heard and observed the witnesses and having carefully reviewed the entire record in this proceeding, together with the proposed findings and briefs filed by the parties, the hearing examiner makes the following findings of fact, enters his resulting conclusions, and issues an appropriate order.

As required by Section 3.51(b)(1) of the Commission's Rules of Practice, the findings of fact include references to the principal supporting items in the record. Such references are intended to serve as convenient guides to the testimony and to the exhibits supporting the findings of fact, but they do not necessarily represent complete summaries of the evidence considered in arriving at such findings. Where reference is made to proposed findings submitted by the

parties, such references are ordinarily intended to include their citations to the record.

References to the record are made in parentheses, and certain abbreviations are used as follows:

CPF—Proposed Findings of Fact, Conclusions of Law and Order filed by counsel supporting the complaint.

CRB—Complaint counsel's Reply [Brief] to Respondents' Memorandum of Law in Support of Proposed Findings of Fact and Conclusions of Law.

CX—Commission Exhibit.

RPF—Respondents' Proposed Findings of Fact, Conclusions and Order.

RML—Respondents' Memorandum of Law in Support of Proposed Findings of Fact and Conclusions of Law.

RRB—Respondents' Reply [Brief] to Complaint Counsel's Memorandum of Law.

RX—Respondents' Exhibit.

Tr.—Transcript.

Sometimes references to the testimony cite the name of the witness and transcript page number without the abbreviation "Tr."—for example, Golub 299. References to the submittals of counsel are keyed to page numbers—for example, CPF 14, RML 17.

FINDINGS OF FACT

I. Respondents and Their Business

Respondents Verrazzano Trading Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. It trades under its own name and as Lan Etruria.

Respondent Francesco Datini, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York.

Respondent Walter Banci is agent for the aforesaid corporations and, in such capacity, is authorized to bind these corporations in their names and in the names of their officers. He is also agent for Lanificio Tuscania, a foreign entity which trades under its own name and as Lan Etruria, and, in such capacity, is authorized to bind such foreign entity and its principals.

Respondents are engaged in the business of the importation from Italy and the sale of woolen and textile fabrics to customers in various States of the United States.

Both corporate respondents and Mr. Banci have their office and principal place of business at Two Pennsylvania Plaza, New York, New York.

The foregoing facts are established by the admissions of respondents in their answers to the complaint or in the course of hearing. However, Mr. Banci's "agency" is only nominal, and a broader finding is warranted, as follows:

In conjunction with certain Italian business entities, both corporate respondents and Mr. Banci constitute a unified family business operation designed to import and sell in the United States fabrics produced in Italy. Although, technically, Mr. Banci is, as alleged, the "agent' for the named corporations, the record establishes that he directs and controls a bi-national enterprise designed to sell fabrics from the Italian mill that he owns and controls.

Mr. Banci, in partnership with his wife, Lola Conti (his share, 98 percent; hers, 2 percent), owns a mill—Lanificio Walter Banci—in Prato, Itly, that produces fabrics or piece goods. Established in 1938, the mill is the largest in Prato and the third largest in Italy. Mr. Banci represents the mill in the United States. The mill began exporting goods to the United States through a jobber about 1958 and later began making direct sales in this country. In 1964–1965, Mr. Banci established Verrazzano "to bring piecegoods in this country, to import the piece goods, to clear the goods, to pay the duty, and to deliver the goods to the customer . . ." (Tr. 526). Through Verrazzano, Mr. Banci has sold directly to such "big customers" as Bobbie Brooks and Jonathan Logan. For dealing with smaller customers, Mr. Banci contracted with Maylis Associates of New York City to act as sales agent. However, because Maylis Associates did not want to use the name Verrazzano, it was agreed that sales through Maylis would be in the name of Lanificio Tuscania, an Italian entity owned by Mr. Banci's wife [2] from whom Mr. Banci had a broad power of attorney (CX 52 A–H) that gives him control. Lanificio Tuscania has now been incorporated as a New York corporation, but it will continue to operate in conjunction with Maylis Associates. (Banci 526–28, 534, 539–40, 544, 548–49, 741–42, 822–25.)

According to one of the partners in Maylis Associates, this firm represented both Verrazzano and Tuscania, but he was unsure of the exact relationship between the two. Although this witness dealt "basically" with Mr. Banci's son Rodolfo Banci in Italy (as to whose

[2] Although generally referred to simply as Lanificio Tuscania, the formal name of this entity appears to be Lanificio Tuscania Ditta Individuale (CXs 47–51). The power of attorney (CX 52 A–H) identifies the entity as "Lanificio Tuscania Di Conti Lola."

exact role he disclaimed knowledge), he had frequent contacts in New York with Walter Banci, whom he assumed to be "someone of interest." (Ellis 473–79, 483, 489, 517–18; see CXs 48, 49.)

Subsequently, in order to facilitate and to distinguish sales made through agents other than Maylis Associates, the trade name "Lan Etruria" was used (Banci 528–30, 535). Although Lan Etruria is a trade name of Tuscania (CX 50, Banci 530–31), it was actually used on behalf of Lanificio Walter Banci (Banci 534–35, 604–09). Verrazzano also used the trade name Lan Etruria, representing itself as "selling agent" for Lan Etruria (CXs 13 A, 14 A; Tr. 472).

Francesco Datini, Inc., was incorporated in 1967 or 1968 to sell fabrics manufactured by Lanificio Walter Banci to American coat manufacturers. Because Maylis Associates was already representing another Italian mill in the coat fabric field, Datini entered into a sales agency arrangement with Berkshire-Cerey of New York City. Datini later sold goods to or through other outlets. (Banci 527, 531, 533–34.)

Although its business relationship was primarily with Datini, Berkshire-Cerey dealt with Mr. Banci and with other personnel of Verrazzano respecting shipments and sales. In addition, Berkshire-Cerey occasionally sold goods on behalf of Verrazzano. The president of Berkshire-Cerey was under the impression that Banci was the "owner" of both Verrazzano and Datini. (Gordon 445, 447–49.)

Datini now appears to be dormant (Banci 827).

Regardless of the corporation or the trade name involved in any transaction—whether it was Verrazzano, Datini, Tuscania, or Lan Etruria—the fabrics were the products of Lanificio Walter Banci, and Verrazzano was the "importer of record" (Banci 537–39, 545, 611, 736–37, 822).

Mr. Banci testified that in the case of Verazzano, his son Marzio Rodolfo Banci "is the president, the shareholders, he is everything." (Tr. 543; see CX 2 A–C.)

Although Mr. Banci initially could not identify the other officers of Verrazzano, he did so after his memory was refreshed. Similarly, his memory was uncertain regarding the officers of Datini, but he agreed that they were the same as the officers of Verrazzano. (Tr. 543–44, 828–29.) Mr. Banci testified that his son Rodolfo is the principal stockholder in both Verrazzano and Datini and referred to him as the "owner" (Tr. 615, 824–25).

Nevertheless, it is essentially undisputed that Walter Banci exercises direction and control over Verrazzano (Tr. 597, 825) and Tuscania (CX 52 A–H), and it is clear also that he played a similar

role with respect to Datini (Banci 596–98, 826–27; Gordon 445–49). Although Mr. Banci minimized his role in connection with the Tuscania transactions handled through Mayliss Associates (Tr. 544–45, 548, 551–53, 555, 826), disavowed any control of Datini (Tr. 836–37), and denied any personal participation in the labeling, invoicing, and shipping of goods (Tr. 580–83), the record as a whole establishes that he directs and controls the policies and practices in this country of the corporate respondents and other entities involved in this proceeding. The whole complex of corporations, trade names, and other entities, both American and Italian, is a single unified enterprise—an integrated family-owned business—designed to sell in the United States fabrics manufactured by Lanificio Walter Banci. The corporate respondents were created by Mr. Banci, and he put his son in as owner (Tr. 824–25). As the entrepreneur of the whole operation, as the representative in the United States of Lanificio Walter Banci and Lanificio Tuscania, and also as the so-called "agent" for Verrazzano and Datini, he may properly be held accountable individually for the practices of the unified enterprise and of each of its component parts.

The business of respondents is substantial. Since 1965 Lanificio Walter Banci has exported to the United States, for sale and distribution through respondents, approximately 20 million yards of fabric, including 6 million yards in each of the years 1968 and 1969. Of the 1968 total, from 2 million yards to 2.5 million yards were imported under the name of Lanificio Tuscania. (RX 5; Banci 738–39.)

Sales in the name of Lanificio Tuscania through Maylis Associates from early 1967 to April 30, 1970, totalled $7.3 million (CX 49; Ellis 518–19).

The annual gross sales volume of Verrazzano has ranged from $4 million to $7 million (Banci 539).

The total gross volume of Datini was estimated as from $100,000 to $200,000 (Banci 541–42).

Respondents are now, and for several years have been, engaged in the introduction, delivery for introduction, advertising, offering for sale, and sale in commerce, in the transportation and shipment in commerce, and in the importation into the United States, of wool products and textile fiber products, as such products are defined in the Wool Products Labeling Act and in the Textile Fiber Products Identification Act, and as "commerce" is defined in those statutes and in the Federal Trade Commission Act. In the course and conduct of their business, respondents have caused their products, when sold,

to be shipped from their place of business in the State of New York to purchasers located in various other States of the United States, and they have maintained a substantial course of trade in such products in commerce as "commerce" is defined in the cited statutes.

II. The Statutory Provisions

Applicable statutory provisions are set forth in pertinent part as follows:

Wool Products Labeling Act of 1939

SEC. 3. The introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this Act or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this Act and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the practice, in commerce within the meaning of the Federal Trade Commission Act. (15 U.S.C. § 68a.)

* * * * * * *

SEC. 4 (a) A Wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—

(A) The precentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers: *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. (15 U.S.C. § 68b.)

* * * * * * *

SEC. 9. (b) Any person who furnishes a false guaranty, . . . with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act. (15 U.S.C. § 68g(b).)

Textile Fiber Products Identification Act

SEC. 3. (a) The introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this Act or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised, within the meaning of this Act or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(c) The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, which is misbranded or falsely or deceptive advertised, within the meaning of this Act or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. (15 U.S.C. § 70a.)

* * * * * * *

SEC. 4. (a) [With exceptions not here material] a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

(b) * * * a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by Section 5, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 percentum or more of the total fiber weight of the product * * *

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fizer product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: * * * *Provided further*, That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission:[3] *And provided*

[3] Rule 43 of the Commission's Rules and Regulations under the Textile Fiber Products Identification Act provides in part as follows:

"RULE 43—*Fiber Content Tolerances.* [see next page]

further, That any such deviation which exceeds said tolerances shall not be a misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification. (15 U.S.C. § 70b (a) (b).)

Federal Trade Commission Act

Sec 5(a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful. (15 U.S.C. § 45(a)(1).).

Definition of Commerce

The term "commerce" means commerce among the several States or with foreign nations. * * * (Wool Products Labeling Act, Sec. 2(h); Textile Fiber Products Identification Act, Sec. 2(k); Federal Trade Commission Act, Sec. 4, 15 U.S.C. §§ 68(h), 70(k), 44.)

III. The Evidence As To Misbranding

A. *Under the Wool Products Labeling Act*

The record contains evidence that labels and invoices concerning five fabrics imported by one or more of the respondents bore tags or labels setting forth fiber-content information that did not conform to the actual fiber content, as disclosed by the testing of samples.

The exact procedures used by respondents for the fiber-content labeling of the fabrics that are imported by or for them is not altogether clear, but no issue has been raised as to the responsibility of respondents for the labeling of goods introduced into commerce. Some fabrics are labeled in Italy by Lanificio Walter Banci, but if a backing is to be bonded to the fabric after importation, the label is affixed by the bonder (Banci 612-14; Gordon 446). The fiber content is ordinarily shown on the invoices and related shipping documents (CXs 57 D–E, 58 D–E, 59 D–E).

The witness from Lincoln Processing Corporation, which bonded

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"(a) A textile fiber product which contains more than one fiber shall not be deemed to be misbranded as to fiber content percentages if the percentages by weight of any fibers present in the total fiber content of the product, exclusive of permissive ornamentation, do not deviate or vary from the percentages stated on the label in excess of 3% of the total fiber weight of the product. For example, where the label indicates that a particular fiber is present in the amount of 40%, the amount of such fiber present may vary from a minimum of 37% of the total fiber weight of such product to a maximum of 43% of the total fiber weight of such product.

"(b) Where the percentage of any fiber or fibers contained in a textile fiber product deviates or varies from the percentage stated on the label by more than the tolerance or variation provided in subsection (a) of this Rule, such product shall be misbranded unless the person charged proves that the entire deviation or variation from the fiber content percentages stated on the label resulted from unavoidable variations in manufacture and despite the exercise of due care." (16 CFR 303.43.)

fabrics for Verrazzano and Lanificio Tuscania, did not know the source of the fiber-content information placed on the labels prepared by Lincoln (Kivor 616–19, 631).

Further information respecting labeling will be developed in connection with the findings of fact relating to the specific fabrics alleged to have been wrongfully labeled.

Four of the questioned fabrics (CXs 1, 11, 12 and 15) are attributable to Verrazzano and respondent Walter Banci. As to these, the factual allegations are found to be supported by the evidence, although there remains the legal question whether the misbranding is within the coverage of the Wool Act (*infra*, p. 661). The fifth fabric (CX 24) is attributable to both Datini and Verrazzano, as well as to Mr. Banci, but the evidence is insufficient to support a finding of violation. The essential facts relating to each are set forth below:

CX 1

CX 1 is a swatch from a "Milo" fabric shipped by Verrazzano in June 1966 to Slifka Fabrics, New York City. This swatch was obtained in January 1967 by a Commission investigator, who also identified a hand-tag attached to the role of fabric that listed the fiber content (CX 2). The Verrazzano invoice reflecting the sale to Slifka (CX 3) listed the same fiber composition as shown on CX 2 and also certified that the fiber content indicated in the invoice "appears on all hang-tags." This certification bears the signature of Walter Banci on behalf of Verrazzano. (Rose 160–68; Tr. 414–15.)

CX 1 was tested by Fabric Research Laboratories, Inc. (CX 36 A–G; Golub 225), this fabric being identified in the report as Sample 2 (Slifka Exhibit A). The fiber content shown on CX 2 and CX 3 and the fiber content shown by testing are compared below:

	Percent
Hang-tag and invoice (CXs 2, 3):	
Reprocessed wool	70
Fur fibers	15
Nylon	10
Other fibers (unknown fibers)	5
Test report (CX 36 F):	
Wool	82. 9
Fur (chiefly rabbit type)	11. 0
Nylon	5. 3
Other fiber (cotton and man-made)	0. 8

CX 11 and CX 12

CX 11 and CX 12 are swatches of fabric sold by Verrazzano to Tunxis Sportswear, Inc., New London, Connecticut. CX 11 is a

sample of "Napoli Melton" sold to Tunxis in early 1968. CX 12 is a sample of the "Larry" style sold to Tunxis in late 1967. The samples were obtained by a Commission investigator in the course of a routine inspection of Tunxis in June 1968. The investigator did not obtain the hang-tags attached to the bolts of fabric from which the swatches were cut, but he copied the information as to each on separate inspection forms. Each hang-tag bore a registered identification number that is conceded to be the registered identification number of Verrazzano. Tunxis officials also identified Verrazzano as the supplier, and invoices were later obtained showing the shipments from Verrazzano to Tunxis. (Moody 322–69; Detz 454–63; Parker 373–83; CXs 43, 44, 13 A, 14 A.) Each of the invoices (CXs 13 A, 14 A) guaranteed compliance with the Wool Products Labeling Act.[3a]

Although respondents contend that "there is considerable question as to the labeling and identity of CX 11 and CX 12 and as to their connection with respondents" (RML 28–33, 2–3), the record as a whole leaves no doubt as to the identity of the fabrics, the fiber content information on the tags, or the responsibility of Verrazzano therefor. There would have been more certainty if the hang-tags had been physically obtained rather than copied, but there is no basis for finding that any mistake was made either in the identification of the fabrics or the copying of the fiber-content information and the registered identification number from the hang-tags. Similarly, the fact that part of each inspection form (CX 43 and CX 44) was written in ink and part was written in blue pencil or blue crayon does not discredit the accuracy of the information shown on the forms, even though the investigator could not remember why he had used two different writing instruments to record the information (Moody 335, 349–55, 362–63).

Moreover, it does not appear to the examiner that the partial misidentification of the "Larry" style raises any serious problem with respect to CX 12. The style as handwritten at the top of CX 44 appears to be "Larry," but the handwriting is such that it is readily misread as "Lang." This is apparently what happened when the investigator wrote "Lang" as the style in the middle of CX 44 and

[3a] In explaining its delay in paying Interstate Factors for the Napoli fabric (CX 11), Tunxis stated that it was "having problems with the material and payment is being withheld pending investigation by Verrazzano Trading" (CX 13 B), but no testimony was adduced to show whether or not the "problems" related to fiber content.