

Syllabus

IN THE MATTER OF
DEAN MERCHANDISING COMPANY, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5950. Complaint, Jan. 24, 1952—Decision, Oct. 6, 1952

Articles of wearing apparel made from the chemical fiber rayon have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such articles and those made from the latter substance, so that such rayon articles are readily accepted by some of the purchasing public as wool products.

Products made from wool have for many years held and still hold great public esteem and confidence because of their outstanding qualities, and in said connection camel's hair is a type of wool and is a highly desirable material for sweaters.

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of brushed rayon sweaters—

- (a) Falsely represented through the labeling on the boxes containing said sweaters that they were hand tailored; when in fact they were machine made;
- (b) Falsely represented through the depiction of a camel on the said boxes that the sweaters were made of camel's hair;
- (c) Offered and sold said sweaters without informing the purchasing public of the fact that they were made of rayon and not wool; and
- (d) Sold and distributed said sweaters—which they thus represented, and impliedly warranted through the labeling, sale and distribution thereof, as suitable and safe for wearing as sweaters ordinarily are—without revealing on the containers or otherwise that said products, by reason of the length of the fibers on the brushed-up surface, were highly inflammable and dangerous and unsafe to wear;

With tendency and capacity thereby to mislead and deceive a substantial portion of the purchasing public into the purchase of substantial quantities of such sweaters, and with result of placing in the hands of retailers a means whereby members of the purchasing public might be thus misled and deceived:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

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

Mr. Joseph Callaway for the Commission.

Mr. Benedetto A. Cerilli, of Providence, R. I., for respondents.

Complaint

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COMPLAINT¹

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Dean Merchandising Company, Inc., a corporation, and Vincent Mele and Anthony Mele, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Dean Merchandising Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 50 Aleppo Street, Providence, Rhode Island.

PAR. 2. The individual respondent Vincent Mele is President and Vice President of the corporate respondent, and the individual respondent Anthony Mele is its Secretary and Treasurer, and as such

¹ The complaint is published as amended by the Commission's order of May 6, 1952, which vacated the original initial decision and remanded the case to the hearing examiner, as follows:

Service of the initial decision of the hearing examiner in this proceeding having been completed on March 24, 1952, and the Commission having, on April 15, 1952, extended until further order of the Commission the date on which said initial decision would otherwise become the decision of the Commission; and

Counsel supporting the complaint having filed on March 31, 1952, a motion requesting that the Commission place this case on its own docket for review and thereafter amend the complaint and the initial decision of the hearing examiner in the respects set forth in said motion, and counsel for the respondents having interposed no objections to the granting of said motion and having agreed that the answer to the complaint, heretofore filed, shall be considered as respondents' answer to the complaint as amended, if said motion is granted; and

It appearing that the complaint herein does not adequately allege the reason or reasons why the garments manufactured and sold by the respondents are highly inflammable, and that, therefore, the initial decision of the hearing examiner, which is based upon said complaint and answer of the respondents admitting all of the material allegations of fact, does not constitute an appropriate disposition of this proceeding; and

The Commission being of the opinion that the complaint herein should be amended and that the initial decision of the hearing examiner should be vacated and set aside, rather than amended as requested by counsel supporting the complaint, and that the case should be remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice:

It is ordered, In conformity with the provisions of Rule XXII of the Commission's Rules of Practice, that this case be, and it hereby is, placed on the Commission's own docket for review.

It is further ordered, That the complaint herein be, and it hereby is, amended by striking the second sentence of Paragraph Eight of said complaint and inserting in lieu thereof the following allegations:

In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material.

It is further ordered, That the initial decision of the hearing examiner heretofore filed in this proceeding be, and it hereby is, vacated and set aside.

It is further ordered, That this case be, and it hereby is, remanded to the hearing examiner for further proceedings in conformity with the Commission's Rules of Practice.

officers formulate, direct and control the acts, policies and practices of the corporate respondent, including the acts and practices herein-after mentioned. These individual respondents also have their offices at 50 Aleppo Street, Providence, Rhode Island.

PAR. 3. The respondents are now, and for more than two years last past have been, engaged in the manufacture, sale and distribution of articles of wearing apparel including sweaters which are composed of rayon. Respondents cause their products when sold to be transported from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 5. The sweaters so manufactured are sold and distributed by the respondents under the brand name "Esquire" and simulate wool in texture and appearance. In the course and conduct of their said business respondents sell and distribute the sweaters in boxes labeled as follows:

Esquire Exclusive Sportswear

(picture of a camel)

Hand Tailored

For Town and Country

PAR. 6. By the aforesaid labeling, respondents have represented that said sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 7. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters.

By the picture of a camel on the boxes in which said sweaters are sold, respondents have represented by implication that said sweaters

are made of camel's hair. In truth and in fact said sweaters are not made of camel's hair or any other type of wool.

Respondents also sell and distribute said sweaters as aforesaid without informing the purchasing public of the fact that the sweaters are made of rayon and not wool.

PAR. 8. By the labeling of said sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that said sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 9. The practice of respondents, as aforesaid, of representing that said sweaters are hand tailored, are made of camel's hair, failing to reveal that the sweaters are made of rayon and failing to reveal that they are made of highly inflammable material, unsafe to be worn as an article of clothing, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said sweaters are made by tailors by hand, are made of camel's hair or some other type of wool and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of said sweaters because of such erroneous and mistaken belief. Furthermore, respondents' said practice places in the hands of retailers of respondents' sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner aforesaid.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated October 6, 1952, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. On February 6, 1952, respondents filed their answer in which they admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to such facts. Thereafter the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint and answer, and the hearing examiner, after duly considering the matter, found that the proceeding was in the interest of the public, and on February 11, 1952, issued his Initial Decision in the matter. Subsequently, upon motion of counsel supporting the complaint, the Commission, on May 6, 1952, placed the proceeding on its docket for review, amended the complaint, vacated and set aside the Initial Decision of the hearing examiner, and remanded the case to the hearing examiner for further proceedings under the amended complaint. Thereafter, on June 13, 1952, respondents filed their answer to the amended complaint in which they admitted all of the material allegations of fact set forth therein and waived all intervening procedure and further hearing as to such facts. Subsequently, the proceeding regularly came on for final consideration by the hearing examiner upon the amended complaint and answer thereto and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Dean Merchandising Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at 50 Alleppo Street, Providence, Rhode Island.

PAR. 2. The individual respondent Vincent Mele is President and Vice President of the corporate respondent, and the individual respondent Anthony Mele is its Secretary and Treasurer, and as such officers these individuals formulate, direct and control the acts, policies and practices of the corporate respondent, including the acts and practices hereinafter mentioned. The individual respondents

also have their offices at 50 Aleppo Street, Providence, Rhode Island.

PAR. 3. Respondents are now, and for more than two years last past have been, engaged in the manufacture, sale and distribution of articles of wearing apparel, including sweaters, which are composed of rayon. Respondents cause their products, when sold, to be transported from their place of business in the State of Rhode Island to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Rayon is a chemical fiber which may be manufactured so as to simulate wool and other natural fibers in texture and appearance. Articles of wearing apparel manufactured from such rayon fibers have the appearance and feel of wool, and many members of the purchasing public are unable to distinguish between such rayon articles of wearing apparel and articles of wearing apparel manufactured from wool. Consequently, such rayon articles of wearing apparel are readily accepted by some of the purchasing public as wool products.

PAR. 5. The sweaters so manufactured are sold and distributed by respondent under the brand name "Esquire" and simulate wool in texture and appearance. In the course and conduct of their business respondents sell and distribute the sweaters in boxes labeled as follows:

Esquire Exclusive Sportswear

(picture of a camel)

Hand Tailored

For Town and Country

PAR. 6. By this labeling, respondents have represented that such sweaters are hand tailored. In truth and in fact, they are not hand tailored but are machine made.

PAR. 7. Products manufactured from wool have for many years held, and still hold, great public esteem and confidence because of their outstanding qualities. Camel's hair is a type of wool and is a highly desirable material for sweaters.

By the picture of a camel on the boxes in which such sweaters are sold, respondents have represented by implication that the sweaters are made of camel's hair. In truth and in fact, the sweaters are not made of camel's hair or any other type of wool.

Respondents also sell and distribute such sweaters without informing the purchasing public of the fact that the sweaters are made of rayon and not wool.

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PAR. 8. By the labeling of such sweaters and by selling and distributing them as aforesaid, respondents have represented and impliedly warranted that they are suitable and safe to be worn as sweaters are ordinarily worn. In truth and in fact the said sweaters, made of brushed rayon, are highly inflammable because of the length of the fibers on the brushed-up surface of this particular material. Sweaters made from such material are dangerous and unsafe to be worn as articles of clothing because of their inflammability. At no place on the sweaters themselves, on the containers in which they are packaged or otherwise is the fact revealed that the sweaters are highly inflammable and dangerous and unsafe to wear.

PAR. 9. The practice of respondents, as aforesaid, of representing that their sweaters are hand tailored, are made of camel's hair, failing to reveal that the sweaters are made of rayon, and failing to reveal that they are made of highly inflammable material, unsafe to be worn as an article of clothing, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such sweaters are made by tailors by hand, are made of camel's hair or some other type of wool, and are suitable and safe to be worn as sweaters are ordinarily worn, and into the purchase of substantial quantities of such sweaters because of such erroneous and mistaken belief. Furthermore, respondents' practice places in the hands of retailers of respondents' sweaters a means and instrumentality whereby members of the purchasing public may be misled and deceived in the manner above set forth.

CONCLUSION

The acts and practices of respondents as hereinabove set out are all to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That the respondents, Dean Merchandising Company, Inc., a corporation, and its officers, and Vincent Mele and Anthony Mele, individually and as officers 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of sweaters or other garments, do forthwith cease and desist from :

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1. Representing as hand tailored any garment which is not such in fact.
2. Offering for sale or selling garments composed in whole or in part of rayon, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, such rayon content.
3. Offering for sale or selling garments made of highly inflammable material, without clearly and affirmatively disclosing thereon, or on tags or labels affixed thereto, that said garments are highly inflammable and are dangerous and unsafe to be worn as articles of clothing.

ORDER TO FILE REPORT OF COMPLIANCE

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 [as required by said declaratory decision and order of October 6, 1952].

