

# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JULY 1, 1954, TO JUNE 30, 1955

## IN THE MATTER OF CAMDEN FIBRE MILLS, INC., ET AL.

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

*Docket 6106. Complaint, June 30, 1953—Decision, July 13, 1954*

Where a manufacturer of cotton, woolen, and synthetic batts or battings sold to manufacturers of shoulder pads and linings, and known as quilters—

- (a) Misbranded certain batts which contained substantial quantities of miscellaneous fibers other than wool, through labeling them as "100% Reprocessed Wool";
- (b) Misbranded batts as "Guaranteed 100% New", when such products were made from reprocessed stock; and
- (c) Failed to stamp, tag, or label as required by law certain cartons containing individual rolls of untagged or unmarked batting:

*Held*, That such acts and practices were in violation of the Wool Products Labeling Act and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John Lewis*, hearing examiner.

*Mr. George E. Steinmetz* for the Commission.

*Mr. Harry Shapiro* and *Mr. Hirsh W. Stalberg*, of Philadelphia, Pa., for respondents.

### 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 July 13, 1954, the initial decision in the instant matter of Hearing Examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

## STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on June 30, 1953, charging them with having violated the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products. Said respondents, after being duly served with the complaint, appeared by counsel and filed their answer in which they admitted the jurisdictional allegations of the complaint but denied having engaged in any illegal practices as charged.

Pursuant to notice, a hearing on the complaint was held on August 25, 1953, in Philadelphia, Pennsylvania, before Hearing Examiner James A. Purcell, theretofore duly designated by the Commission to hear this proceeding. Thereafter, on October 15, 1953, a further hearing on the complaint was held in New York, New York before the undersigned hearing examiner, who had theretofore been duly designated by the Commission to preside at said hearing in place of James A. Purcell, due to the latter's illness and unavailability to conduct said hearing. Counsel for respondents and counsel supporting the complaint interposed objection to the substitution of the undersigned as hearing examiner to the extent that such substitution was limited to his presiding at the single hearing, but stated that they had no objection to his substitution for the purpose of completing the taking of testimony and other evidence in this proceeding and the issuance of an initial decision based on all the evidence in the case, including that previously adduced before the original hearing examiner. Thereafter, pursuant to order of the Commission, the undersigned hearing examiner was substituted as hearing examiner in this proceeding in place and stead of Hearing Examiner James A. Purcell. Further hearings in this proceeding were held before the undersigned on January 7, 1954 at Washington, D. C., and on March 11, 1954 at Philadelphia, Pennsylvania.

At the various hearings held herein testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, which testimony and other evidence were duly recorded and filed in the office of the Commission. All parties were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. No request for oral argument was received from counsel. However, counsel availed themselves

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of the opportunity of filing proposed findings and conclusions, together with the reasons therefor, which have been carefully considered by the examiner.

Upon consideration of the entire record herein, and from his observation of the witnesses (with the exception of the two witnesses who testified at the first hearing),<sup>1</sup> the undersigned makes the following:

## FINDINGS OF FACT

## I. The business of respondents

In their answer respondents admit, and it is so found, that respondent Camden Fibre Mills, Inc. is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 166-176 West Columbia Avenue, Philadelphia 22, Pennsylvania. It is further admitted, and is so found, that respondents Louis Silverstein, Raymond Silverstein and Frank N. Cooper are president and treasurer, secretary, and assistant secretary and treasurer, respectively, of the corporate respondent and that said individuals formulate, direct and control the acts, policies and practices of the corporate respondent, said individual respondents having and maintaining their business offices at the same address as the corporate respondent.

Respondents are manufacturers of certain cotton, woolen, and synthetic battings which they sell to manufacturers of shoulder pads and manufacturers of linings, known as quilters. Respondents have been engaged in the manufacture of battings from woolen material since approximately May 1951, having prior thereto confined their operations to battings made from other fibers. Respondents' total sales are in excess of \$1,500,000 per annum, with the sales of batting made from wool amounting to approximately \$200,000.

## II. The interstate commerce

The largest market for respondents' wool battings is in the New York City area, with some sales being made in Pennsylvania and Maryland. The answer of respondents admits, and it is so found, that subsequent to the effective date of the Wool Products Labeling Act and more especially since the beginning of the year 1951, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and

<sup>1</sup> No substantial issue of credibility is involved in the testimony of Frank N. Cooper and Robert S. Scott (who testified at the first hearing), in the resolution of which an opportunity for observation of the demeanor of these witnesses would be of any material assistance.

offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act, wool products, as "wool products" are defined therein.

### III. The alleged misbranding

#### A. *The charges*

The complaint alleges three different types of misbranding with respect to respondents' wool batting, as follows:

1. That certain of the batting was misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act and Rule 30 of the Rules and Regulations promulgated thereunder, in that it was falsely and deceptively identified as "100% Reprocessed Wool," whereas in fact it was not composed of 100% reprocessed wool but contained substantial quantities of miscellaneous fibers other than wool.

2. That certain of the batting was misbranded within the meaning of Section 4 (a) (1) of the Act and Rule 20 of the Rules and Regulations in that it was falsely and deceptively tagged as consisting of all or 100% new materials, whereas in fact it did not contain new wool but was composed of reprocessed wool, together with certain quantities of miscellaneous fibers other than wool.

3. That certain of the batting was misbranded in that it was not stamped, tagged or labeled as required under Section 4 (a) (2) of the Act and in the manner and form prescribed by the Rules and Regulations.

#### B. *The evidence*

The evidence of misbranding revolves around four samples of batting, alleged to have been manufactured by respondents, which were obtained by attorney-investigators of the Commission from the premises of four different customers of respondent. Three of the samples were obtained by one investigator and the fourth sample was obtained by another. The first sample, identified in this proceeding as Commission's Exhibit 11, was obtained from respondents' customer, State Quilting Company, on October 4, 1951. It was removed from a sealed carton bearing the name "Camden Fibre Mills Inc." and a label with the words, "100% Reprocessed Wool." Respondents' packing slip, which accompanied the merchandise on delivery to the customer, and their invoice covering the sale of the batting, both described the product as "100% Reprocessed Wool." The second sample, identified as Commission's Exhibit 12, was obtained by the same investigator on February 19, 1952 from the premises of Philip Gottlieb, a contractor performing quilting for respondents' cus-

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tomers, L. Rimsky Inc., a textile converter. The sealed carton from which this sample was obtained contained the name "Camden Fibre Mills Inc.," but no label or tag with respect to wool content. However, respondents' packing slip and invoice covering the delivery and sale of the batting which were obtained from the customer, L. Rimsky Inc., describe the batting as "Wool Batting Type WOOL \* \* \* 100% Reprocessed." The third sample, identified as Commission's Exhibit 13, was obtained by the same investigator on January 14, 1952 from the premises of respondents' customer, Crown Quilting Company. The sample was obtained from a sealed carton bearing a tag with the identifying name "Camden Fibre Mills Inc." but no description of the wool content other than a designation of the product as "Wool." However, the packing slips and invoices covering the shipment and sale of the cartons of batting, from which the sample was taken, describe the merchandise as "Wool Batting Type WOOL \* \* \* 100% Reprocessed Wool." The fourth sample, identified as Commission's Exhibit 15, was obtained by a second Commission investigator from the premises of respondents' customer, Kasbar Quilting Company, during February 1952. The sample was taken from a sealed carton bearing a tag with the name "Camden Fibre Mills Inc." The tag describes the product as "Wool" and it is further identified on the packing slip and invoice as "100% Reprocessed Wool."

Within a short time after each of the above samples was obtained, a portion thereof was transmitted to the National Bureau of Standards for testing as to fiber content. Each of the samples was given a chemical test, in accordance with standard Government specifications, to determine the presence of various fibers and the quantities thereof. In testing each piece of batting submitted, two samples from each piece were taken and separately tested. The results of these tests are as follows:

Fiber	Exhibit 11 Sample		Exhibit 12 Sample		Exhibit 13 Sample		Exhibit 15 Sample	
	No. 1	No. 2	No. 1	No. 2	No. 1	No. 2	No. 1	No. 2
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Acetate Rayon.....	1.9	1.9	2.0	1.9	1.6	1.4	1.3	1.5
Nylon.....			2.1	2.2			2.8	3.1
Vegetable Fiber (including cotton and viscose rayon).....	10.8	10.6	3.6	3.6	7.3	7.3	4.3	4.1
Wool.....	87.3	87.5	92.3	92.3	91.1	91.1	91.6	91.6

The first charge of misbranding is based on the fact that the above samples were labeled or identified, either on the cartons from which

they were taken, or on the packing slips and invoices accompanying the delivery and sale of the merchandise, or on both, as "100% Reprocessed Wool," whereas the tests made by the Bureau of Standards disclose that they contained substantial quantities of other fibers. The second charge of misbranding is based upon the fact that all of the tags, invoices and packing slips of respondents', which were received in evidence in this proceeding, contain the following printed statement thereon: "Our Products Guaranteed 100% New." This representation is claimed to be false since respondents' wool batting is admittedly made from reprocessed, rather than new, wool. The third charge of misbranding rests primarily on the fact that the individual rolls of batting do not contain any tag, label or other means of identification showing the wool content of each piece of batting. Where a tag or label as to wool content is used it is affixed to the cartons in which the individual rolls of batting are packed for delivery, rather than on the rolls themselves.<sup>2</sup>

#### *C. Contentions of respondents*

The evidence offered by respondents in opposition to the complaint, and the contentions advanced by them, are directed primarily to the first charge of misbranding, viz., that respondents falsely or deceptively identified certain of their batting as 100% reprocessed wool. Respondents' contentions in this regard fall into three main categories, which may be summarized as follows:

1. Counsel for respondents attempted to establish at the hearings that there was a possibility the samples obtained by the Commission's attorney-investigators and tested by the Bureau of Standards, were not respondents' merchandise, but had been confused with merchandise from other manufacturers. It is not entirely clear whether respondents are still urging this contention, although the proposed findings submitted by them would appear to indicate that they now concede that the four samples were taken from their merchandise.<sup>3</sup> In any event, however, the hearing examiner is satisfied from the record, and so finds, that the samples obtained by the Commission's agents and tested by the Bureau of Standards were all samples of merchandise manufactured by respondents and sold to the various customers referred to above under the designation or description, on the tag, label or accompanying invoice, of 100% reprocessed wool. The testimony of the Commission's investigators combined with

<sup>2</sup> The rolls of batting, which vary from 25 to 80 yards in length, are wrapped in tissue paper and are usually packed six to the carton.

<sup>3</sup> See particularly paragraph 17 of respondents' proposed findings.

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that of the customers from whom they obtained the samples of merchandise, invoices, packing slips and tags establishes *prima facie* that the merchandise they obtained was manufactured and sold by respondents. The evidence offered on behalf of respondents is insufficient to overcome the *prima facie* case thus established. In fact, aside from attempting to discredit the Commission's investigator Robert S. Scott, on cross-examination,<sup>4</sup> there was no evidence offered by respondents which in any way suggests that the merchandise was not respondents'.

2. The second contention of respondents, and one which they seriously urged both at the hearing and in their proposed findings, is that there exists an understanding or custom in the trade that a wool product may be designated as 100% wool if it does not contain more than 5% non-wool fibers, and that consequently none of respondents' customers were deceived by the designation of the batting, which they bought from respondents, as 100% reprocessed wool. Respondents' contention that there is, in effect, a 5% tolerance in the labeling of wool products is based on a misconception of both the law and the facts. In the first place the only tolerances permitted under the Wool Products Labeling Act in the labeling of wool products are (a) where the deviation in fiber content from that stated on the label has resulted from "unavoidable variations in manufacture and despite the exercise of due care," and (b) an exemption in labeling a wool product, to the extent of 5% of the total fiber weight of such wool product, for "ornamentation." Neither of these so-called tolerances are applicable in the instant situation since there has been no showing by respondents that the variations in their product, described as 100% reprocessed wool, were due to any unavoidable variations in manufacture after the exercise of due care,<sup>5</sup> or that the variations consisted of any ornamentation in the batting. In the face of the plain wording of the statute any trade practice or understanding to the contrary has no legal force or effect as a justification for the misdescription or misrepresentation of merchandise.<sup>6</sup> Con-

<sup>4</sup> Despite rather strenuous cross-examination of the witness Scott, the hearing examiner is satisfied from his testimony as a whole, which was largely corroborated by the testimony of respondents' customers, that the samples he obtained were from batting manufactured and sold by respondents.

<sup>5</sup> Respondents did submit evidence that instructions had been given to employees that when changing from blended wool to 100% wool, the machinery used in processing the batting should be cleaned. This, however, does not establish that the deviations from the 100% wool designation resulted from unavoidable variations in manufacture since, according to one of respondents' own witnesses from the United States Testing Company, the wool content of the batting will always correspond to the fiber content of the wool stocks from which it is made.

<sup>6</sup> See *F. T. C. v. Winsted Hosiery Co.*, 258 U. S. 483, 493.