

## IN THE MATTER OF

BROADMORE FASHIONS, INC., DAN-DEL COAT CORP.,  
AND BERNARD DROBES AND HARRY BRODYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE  
COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT*Docket 6231. Complaint, Aug. 19, 1954—Decision, Jan. 18, 1955*

Order requiring two sellers in New York City to cease violating the Wool Products Labeling Act by labeling certain ladies' coats as "100% Cashmere" when they were composed entirely of sheep's wool, by failing to label wool products as required, and by failing to set forth separately on tags the fiber content of interlinings.

*Mr. George Steinmetz* for the Commission.

*Mr. Charles M. Kagan*, of New York City, 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 January 18, 1955, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

## INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on August 31, 1954, issued its complaint herein under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, against the above-named corporate respondents and against the respondents Bernard Drobos and Harry Brody, both individually and as officers of both of said corporations, charging them and each of them in several particulars with having violated the provisions of said Acts and of the Rules and Regulations of the Commission promulgated under said Wool Products Labeling Act. Said complaint was duly served upon each of said respondents. On September 20, 1954, all respondents filed their answer, and on October 4, 1954, pursuant to an order of the hearing examiner so authorizing, they filed their amended answer. The amended answer in substance admits all allegations of the complaint except that respondent Harry Brody denies being an officer of Dan-Del Coat Corp., and all respondents state they are without any knowledge as to whether the ladies' coats referred

to in the complaint contained any of the hair or fiber of the Cashmere or Kashmir goat as alleged therein. Respondents reserved, however, in said amended answer, their right to submit proposed findings and conclusions of law and the right to appeal under the Rules of Practice of the Commission.

A hearing was held pursuant to the notice given in the complaint, at New York, New York, on October 26, 1954, before the above-named hearing examiner, theretofore duly designated by the Commission, upon the issues presented by said complaint and amended answer. At such hearing respondents appeared by their above-named attorney of record and it was agreed between counsel supporting the complaint and all respondents by their said attorney that in lieu of the introduction of oral testimony and other evidence by the parties that the proceeding would be submitted for decision on the basis of a "Stipulation as to the Facts," upon which the hearing examiner might in his discretion proceed to make his initial decision, stating therein his findings as to the facts, including inferences to be drawn from said stipulation, and that an order might be entered by him disposing of the proceeding as to each and all of the respondents, in form and substance as set forth in the "Notice" portion of the complaint, without the filing of proposed findings and conclusions, or the presentation of oral argument. There was no waiver by respondents of their right to appeal and it was stipulated that if the proceeding should come before the Federal Trade Commission upon appeal from the hearing examiner's initial decision or by review upon the Commission's own motion, it may set aside the stipulation and remand the case to the hearing examiner for further proceedings under the complaint.

Upon the statements of counsel and upon due consideration of said stipulation by the hearing examiner, said stipulation was accepted by the hearing examiner and received in evidence, subject only to a reservation then made by counsel for respondents that later in the hearing he might also submit in evidence a photostatic copy of a certain bank resolution purporting to prove that the respondent Harry Brody had first become an officer of the respondent Dan-Del Coat Corporation on March 12, 1954. An exhibit purporting to be such bank resolution was thereafter offered in evidence on behalf of said respondent Harry Brody without objection and the same was received in evidence by the hearing examiner. This document, however, the hearing examiner finds is not in fact a bank resolution and at most is only indicative that one Gustave Daniels was the president of Dan-Del Coat Corp. on February 5, 1954, and it does not tend to prove or disprove any of the issues presented herein or in any manner

affect the agreed facts set forth in the said "Stipulation as to the Facts."

Counsel for respondents also made an argument purporting to bear upon mitigation, explaining in substance the business losses claimed to have been sustained by the respondent Dan-Del Coat Corp. prior to its dissolution in connection with the sale or resale of certain of the misbranded coats involved herein; that Brae Burn Coats, Inc., a newly organized corporation has succeeded to the business of Dan-Del Coat Corp., now dissolved, and of which new corporation the respondents Bernard Drobos and Harry Brody are the officers and formulators of policy; and that such new corporation is conducting its business in accordance with the Wool Products Labeling Act. Such matters of alleged mitigation have no bearing in this particular proceeding which is preventive in nature. The complaint herein does not allege any intent to do a wrongful act. The Wool Products Labeling Act has among its express objectives, as stated in its Title, the protection of "producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted or otherwise manufactured wool products." The Act makes misbranding the gist of the offense and "contemplates corrective action by the Commission regardless of whether such misbranding is based upon wilfulness, negligence, or other causes." *Smithline Coats, et al.*, 45 F. T. C. 79 (1948), opinion of Commissioner Ewin L. Davis, pp. 86, 87. And it just as clearly appears that whether the respondents here have profited or lost by the re-sale of misbranded garments after any alleged violation of the Act is immaterial to a decision in this particular proceeding on the issue of whether or not they were in fact misbranded contrary to the Act.

And now the proceeding having come on for final consideration and initial decision by the hearing examiner upon the complaint, answer, stipulation, evidence and statements and arguments of counsel made at the hearing, counsel having stipulated not to file proposed findings and conclusions, and the hearing examiner having duly considered the whole record herein, finds that this proceeding is in the interest of the public; that the complaint states in each alleged particular a cause for complaint under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and Rules and Regulations promulgated under the later act; and that the Commission has jurisdiction of the subject matter and of each of the parties respondent. The hearing examiner therefore makes the following findings of facts as so stipulated, the conclusions drawn therefrom, and order.

## FINDINGS OF FACTS

PARAGRAPH 1. The corporate respondent Broadmore Fashions, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and respondent Bernard Drobles is president and secretary, and respondent Harry Brody is vice president and treasurer thereof. These individual respondents formulate, direct and control the acts, policies and practices of the said corporate respondent, Broadmore Fashions, Inc.; and the principal office and place of business of each said corporate and individual respondents is 237 Mercer Street, New York 12, New York.

PAR. 2. The corporate respondent, Dan-Del Coat Corp., was a corporation organized under and by virtue of the laws of the State of New York in January 1954, and thereafter continued to function as a corporate manufacturing, selling, and distributing organization until on or about September 15, 1954, at which time it filed a Certificate of Dissolution with the Department of State, State of New York, pursuant to the statutes of the State of New York, in such case made and provided.

PAR. 3. That during the existence of said corporate respondent, Dan-Del Coat Corp., the respondent Bernard Drobles acted as president, and the respondent Harry Brody, as secretary and treasurer thereof. These individual respondents, Bernard Drobles and Harry Brody formulated, directed and controlled the acts, policies and practices of said corporate respondent, Dan-Del Coat Corp., during the term of its existence, and the office and principal place of business of said respondents, including Dan-Del Coat Corp., was 286 Taaffe Place, Brooklyn, New York.

PAR. 4. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since September 1st, 1953, the said respondents, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in said Act, Wool products, as "wool products" are defined in said Act.

PAR. 5. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder in that they were falsely and deceptively labeled or tagged with respect to the character and amount of the constituent fibers contained therein. Among such misbranded wool products were ladies' coats labeled or tagged by respondents as consisting of "100% Cashmere," whereas, in truth and in fact, said products were composed entirely of the wool of the genus sheep.

Order

51 F. T. C.

PAR. 6. Through the use of said labels, tags and legends aforesaid, respondents represented that said wool products were manufactured from fabrics composed of the hair or fiber of the Cashmere or Kashmir goat, which representations were false and deceptive in that they did not contain any of the hair or fiber of the Cashmere or Kashmir goat, but were composed entirely of fabrics manufactured from the wool of the genus sheep.

PAR. 7. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (2) of said Wool Products Labeling Act of 1939 and of the Rules and Regulations promulgated thereunder, in that they were not stamped, tagged or labeled as to disclose the name or the registered identification number of the manufacturer thereof or of one or more persons subject to Section 3 of said Act with respect to said wool products.

PAR. 8. Certain of said wool products were further misbranded in that the fiber content of the interlinings was not separately set forth on the stamps, tags, labels or other means of identification attached thereto.

## CONCLUSIONS

The acts and practices of the respondents as above stipulated by the parties and hereinabove found to be factually true were and are in each particular in violation of the Wool Products Labeling Act of 1939, and of the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act. Although the Dan-Del Coat Corp. was dissolved subsequent to the institution of this proceeding, which dissolution took place on or about September 15, 1954, for the purposes of this proceeding the order hereinafter entered should run against it and its said officers.

## ORDER

*It is ordered,* That respondent Broadmore Fashions, Inc., a corporation; respondent Dan-Del Coat Corp., a corporation; respondents Bernard Drobos and Harry Brody, individually and as officers of said corporations; and respondents' representatives, agents and employees, 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 ladies' coats or other "wool products," as such products are defined in and are subject to the said Wool Products Labeling Act of 1939; which products contain,

610

Order

purport to contain, or in any manner are represented as containing "wool," "reprocessed wool" or "reused wool," as such terms are defined in said Act, do forthwith cease and desist from misbranding said products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. 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 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 product 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 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.

3. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as containing hair or fleece of the Cashmere or Kashmir goat.

4. Failing to separately set forth on the stamps, tags, labels or other means of identification, the true character and amount of constituent fibers of the interlinings of any such wool product.

*Provided*, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939, and

*Provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

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 January 18, 1955].

IN THE MATTER OF  
SPIRT & COMPANY, INC., ET AL.

ORDER, DISSENTING OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 5926. Complaint, Oct. 8, 1951—Decision, Jan. 20, 1955*

Order requiring a corporation in Waterbury, Conn., to cease advertising that its preparation "Lipan", the active ingredients of which were hog pancreas and vitamins B<sub>1</sub> and D, was a cure for psoriasis and would prevent its recurrence.

Before *Mr. J. Earl Cox*, hearing examiner.

*Mr. John J. McNally* for the Commission.

*Weisman & Weisman*, of Waterbury, Conn., and *Mr. Lewis E. Caplan*, of New Haven, Conn., for respondents.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal of counsel supporting the complaint from initial decision and decision of the Commission and order to file report of compliance, Docket 5926, January 20, 1955, follows:

This matter came on to be heard by the Commission upon the appeal filed by counsel supporting the complaint from the initial decision of the hearing examiner and upon the briefs in support of and in opposition to said appeal, oral argument not having been requested.

The Commission having considered the appeal and the record herein and having determined that the grounds for appeal are without merit and having additionally determined that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding;

*It is ordered*, That the appeal of counsel supporting the complaint from the initial decision of the hearing examiner be, and it hereby is, denied.

*It is further ordered*, That the initial decision of the hearing examiner did, on the 20th day of January 1955, become the decision of the Commission.

*It is further ordered*, That the respondents, Spirt & Company, Inc., a corporation, and Louis L. Spirt, S. Burton Spirt and Thelma F. Spirt, individually and as officers of said corporation, 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 contained in the initial decision.

Commissioner Mead dissenting.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 8, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Spirt & Company, Inc., a corporation, and Louis L. Spirt, S. Burton Spirt, and Thelma F. Spirt, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answer, testimony and other evidence, and proposed findings as to the facts and conclusions of law presented by counsel, and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Spirt & Company, Inc., is a corporation organized and existing by virtue of the laws of the State of Connecticut with its office and principal place of business located in Waterbury, Connecticut.

Respondents Louis L. Spirt, S. Burton Spirt and Thelma F. Spirt are president, treasurer and secretary, respectively, of corporate respondent. Said individuals as officers of corporate respondent formulate, direct and control its policies, acts and practices.

PAR. 2. The respondents are now, and have been for more than one year last past, engaged in the sale of a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act. Said preparation is sold in both tablet and capsule form.

The designation used by respondents for their said preparation and the formula and directions for use thereof are as follows:

Designation : Lipan.

Formula : The active ingredients in each tablet or capsule are :

7½ grains of desiccated and defatted hog pancreas of triple U. S. P. strength.

500 International Units of Vitamin B<sub>1</sub>

500 International Units of Vitamin D.

Directions :

Dosage : Two to three capsules before each meal or as recommended by the physician. Chemical research has shown that because of the special nature of the LIPAN treatment, results should be expected only after LIPAN has been taken for several weeks. Careful investigation by well known physicians has demonstrated that Psoriasis—so difficult to correct—may be effectively alleviated when LIPAN is taken consistently.

Alcohol contra-indicated : During treatment, it is essential that alcoholic beverages or alcohol in any form be avoided. (Keep bottle tightly capped.)

PAR. 3. Respondents cause said preparation, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning Lipan by the United States mails, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were and are likely to induce, directly or indirectly, the purchase of said product in commerce.

Among the statements and representations contained in said advertisements are the following :

(a) For the past several years a number of Physicians have reported amazing success in treating Psoriasis with LIPAN—a new medical wonder taken *internally*. LIPAN (registered U. S. Patent Office) is a combination of glandular substances that treat certain internal disorders which many medical men now agree to be the cause of Psoriasis. Clinical results show LIPAN successful in over 90% of the cases treated. Even stubborn lesions are alleviated to a degree almost beyond belief. *Absolutely harmless*.

(b) Psoriasis, as you know, is an unpredictable affliction and no one can foretell exactly how quickly response will be observed in any given case. Patient dosage with LIPAN has been found to be effectively gratifying to those who exhibit a persistent attitude. Whether your own case responds quickly to LIPAN, or whether it proves to be one of the medium or obstinate cases, we are confident that a persistent attitude and patient dosage with LIPAN will be found effective.

(c) Do not expect miracles from LIPAN but give it a thorough trial. Psoriasis does not develop overnight and it will not disappear overnight. Although this new internal medication has demonstrated remarkable ability to clear up the skin and to keep it free from lesions year after year, results are not obtained immediately. Remember, when you take LIPAN you are attacking what is now believed to be the cause of the disease, not merely treating the symptoms. Patience is necessary. Naturally, different sufferers from Psoriasis respond differently. As a general rule, it takes at least five weeks before the lesions and crusty scales begin to disappear. For obstinate cases a longer time may be needed.

Subparagraph (a) above is the text of an advertisement appearing in "Screenland" and "Personal Romances" magazines during the first half of the year 1951; subparagraph (b) is from a form letter used by respondents to acknowledge receipt of a reorder of Lipan and was sent by mail separately or enclosed in the reorder shipment; and subparagraph (c) is from the last paragraph of an advertising circular distributed by respondents to persons who asked for information regarding Lipan.

PAR. 5. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, respondents have represented and now represent that Lipan, taken as directed, is effective for the alleviation of the lesions and scales which are the visible symptoms or manifestations of psoriasis. There is no direct representation that Lipan is an "effective treatment" for psoriasis as alleged in the complaint. However, there are statements in respondents' advertising matter which, considered in the light of the emphasis added by the format and type selection of the advertisements, would lead to the conclusion upon the part of a substantial part of the purchasing public that Lipan is a cure for psoriasis and will prevent its recurrence.

PAR. 6. The said advertisements are misleading in material respects and are false advertisements as that term is defined in the Federal Trade Commission Act, as more specifically hereinafter set forth.

The record is clear that the etiology of psoriasis is undetermined and that there is no known cure; hence, any representation, direct or implied, that respondents' product is a cure for psoriasis and will prevent its recurrence is false and misleading.

Whether or not Lipan is effective, or an "effective treatment," as used in the complaint, for psoriasis depends upon definition. Some of the medical testimony was to the effect that for a product to be an effective treatment for a disease it must be a cure for that disease, but the preponderance of the evidence is that, although as to some diseases such connotation is acceptable, yet as to ailments for which there is no known cure, the term is used by the medical profession and under-

stood quite generally as referring to an agent or treatment that brings about an amelioration of symptoms, which, in the case of psoriasis, would be a clearance of all or a substantial portion of the lesions or patches for a reasonable length of time. Cure would connote the complete removal or involution of all the skin lesions without recurrence. The preponderance of the reliable, probative and substantial evidence in this proceeding does not support the conclusion that Lipan is not, in many instances, an effective treatment for psoriasis.

In support of the allegations of the complaint three eminent dermatologists were presented none of whom had used respondents' product although all of them had used, separately or in combination, vitamin B<sub>1</sub>, vitamin D and a pancreatic substance which none of them could identify as being from the same source or of the same strength as that contained in Lipan. Two of these experts, father and son, defined effective treatment as synonymous with cure, and stated that Lipan is not an effective treatment for psoriasis. Their testimony must be evaluated in terms of their definition. The other expert stated that an effective treatment should result in removal of all the lesions of the disease for a considerable period of time and, based on his clinical observations and his use of the ingredients indicated above, he would not think that Lipan would be an effective treatment.

In opposition to the allegations of the complaint, respondent Louis L. Spirt testified that he was born in 1907, that he had suffered from psoriasis since infancy, that following the use of desiccated, defatted hog pancreas for an eight month period in 1939, the psoriatic lesions which had previously covered approximately seventy-five percent of the surface of his body disappeared. For a period of about six months he then discontinued the use of this substance and the lesions returned. He then resumed the hog pancreas treatment and the lesions again cleared completely. He continued the use of hog pancreas until 1946 or 1947 when he started using Lipan. Since then he has been taking "a maintenance dose" of two capsules of Lipan daily and his skin has been free of lesions.

This testimony was supported by Spirt's personal physician, a specialist in internal medicine, who testified also that he has used and uses Lipan in his private practice and has found it an effective treatment for psoriasis; defining effective treatment as one in which from 50% to 75%, or more, of the psoriatic lesions are cleared. During a test period of from 12 to 18 months, he administered Lipan to some forty psoriatic patients and observed that beneficial results were obtained in from 60% to 65% of the cases. His belief that Lipan is an

