

IN THE MATTER OF
MEYRICH TEXTILE CO.

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

Docket 6985. Complaint, Dec. 13, 1957—Decision, Apr. 26, 1958

Consent order requiring a manufacturer of wool products in New York City to cease violating the Wool Products Labeling Act by labeling as "100% Wool Except of Ornamentation", interlining materials which consisted of reprocessed wool or reprocessed wool and nonwoolen fibers; by failing to label certain wool products as required; and by misrepresenting wool products in sales invoices, shipping memoranda, and letters to garment manufacturers as "100% Stitched Wool" and "100% Wool."

Garland S. Ferguson, Esq., for the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued December 13, 1957, charges the respondent above named with violation of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and of the rules and regulations promulgated under authority of the said Wool Products Labeling Act, in connection with the introduction or manufacture for introduction into commerce, sale, offering for sale, transportation and distribution, and delivery for shipment in commerce of interlinings or other wool products in commerce, as "commerce" is defined in said Acts.

After the issuance of said complaint respondent, on January 29, 1958, entered into an agreement for a consent order with counsel in support of the complaint, disposing of all of the issues in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation of the Federal Trade Commission. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as though the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission,

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the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the respondent may otherwise be entitled under the Federal Trade Commission Act or the rules of practice of the Commission.

By said agreement, respondent further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as though made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission.

Said agreement recites that respondent Eli Meyrich is an individual trading and doing business as Meyrich Textile Co., with his office and principal place of business located at No. 302 West 37th Street, New York, N.Y.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and, without further notice to respondent is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, wherefore he issues the following order:

ORDER

It is ordered, That the respondent Eli Meyrich, trading as Meyrich Textile Co., or under any other name, and respondent's 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 interlinings or other "wool products" as "wool products" are defined

in and subject to the Wool Products Labeling Act do forthwith cease and desist from:

A. Misbranding such product by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained 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 the 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 nonfibrous loading, filling or adulterating matter:

(c) The name of 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 of such wool product in commerce as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Eli Meyrich, trading as Meyrich Textile Co., or under any other name, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which his products are composed, or the percentages or amounts thereof, in sales invoices, shipping memoranda or in any other manner.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 26th day of April 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF
BLACK & CO., INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 6913. Complaint, Oct. 9, 1957—Decision, Apr. 29, 1958*

Order requiring two associated mail order sellers of general merchandise in Rockville Center, Long Island, N.Y., to cease representing falsely in advertising that they had in stock the merchandise advertised or that it was readily available and that they would deliver it within a reasonable time; that when it was out of stock and unobtainable, the customer's check would be returned promptly or the payment promptly refunded with complete satisfaction to the customer in all cases.

Mr. Charles S. Cox supporting the complaint.

Respondents appearing without Counsel.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

On October 9, 1957, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violation of the Federal Trade Commission Act as set forth in said complaint. From the record it appears that service of the complaint and of the order designating the undersigned as hearing examiner herein was obtained on December 3, 4, and 5, 1957.

On December 6, 1957, the hearing examiner, upon examination of the record found that no proof of service had been filed and cancelled the hearing set in the notice portion of the complaint for New York on December 19, 1957. Later on December 19, 1957, proof of the service obtained on December 3, 4, and 5, 1957 being in the record, the hearing examiner issued an order setting the initial hearing herein for 10 a.m. on January 13, 1958 in room 511-C, United States Court House, Foley Square, New York, N.Y.

The hearing was held at the time and place mentioned and respondents Leslie F. Black, Hans Jensen and John M. Zwicki (erroneously called Swicki in the complaint) appeared in person at said hearing in response to subpoenas served on them. None of the respondents were represented by counsel at said hearing.

At said hearing each of said individual respondents stated on the record that they admitted all the material allegations of the complaint. Subsequent to said hearing, it was ascertained that no service had ever been obtained on any of the respondents of the hearing examiner's

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order of December 19, 1957, setting the initial hearing for January 13, 1958.

In view of the circumstances set forth above, no initial decision was issued as a result of what transpired at said hearing.

On February 10, 1958, all respondents filed answer to the complaint herein, each admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the said facts.

In accordance with section 3.7(2) of the Commission's rules of practice the hearing examiner now makes the following findings as to the facts, conclusions and order:

FINDINGS AS TO THE FACTS AND CONCLUSIONS

PARAGRAPH 1. Respondents Black & Co., Inc. and Home Merchandise Co., Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, and individual respondents Leslie F. Black, Hans Jensen, and John M. Zwicky are president, vice president, and secretary-treasurer, respectively, of each of said corporate respondents. The individual respondents have dominant control of advertising policies and business activities of the corporate respondents, and all of the respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter set forth. The office and principal place of business of the corporate respondents is located at 125 Merrick Road, also described as Merrick Road and Sunrise Highway, Rockville Center, Long Island, N.Y. The address of the individual respondents are as follows: Leslie F. Black, 111 Horton Street, Malverne, Long Island, N.Y.; Hans Jensen, The Canterbury House, 15 Canterbury Road, Great Neck, Long Island, N.Y.; John M. Zwicky, 116-33 218th Street, Queens, Long Island, N.Y.

PAR. 2. Respondents for more than 2 years prior to the issuance of the complaint herein were engaged in the business of selling general merchandise through mail order catalogs, circulars, letters or other printed media. Respondents caused their said catalogs, circulars, letters or other printed media to be sent through the United States mails from their place of business in Rockville Center, Long Island, N.Y., to various members of the purchasing public located in the various States of the United States and in the District of Columbia. At all times mentioned herein various members of the purchasing public located in the various States of the United States and in the District of Columbia received said catalogs, circulars, letters, or other printed media and, as a result thereof, sent in to respondents at their

said place of business at Rockville Center, Long Island, N.Y., through the United States mails and otherwise, orders with accompanying checks or money orders for various articles of general merchandise listed therein. Respondents caused said ordered merchandise, when shipped, to be transported from their said place of business in Rockville Center, Long Island, N.Y., or from the factory producing or the warehouse storing same, by or through the United States mails or otherwise, to purchasers and other persons located in the various States of the United States and in the District of Columbia. Respondents at all times mentioned herein maintained a substantial course of trade in said general merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business in commerce, through the use of catalogs and other advertising media, respondents represented, directly or by implication, that they would have in stock the merchandise advertised therein during the period of time such catalogs or advertising were in effect, or that such merchandise was readily available and that they would obtain and deliver the same within a reasonable period of time. Respondents further represented in circulars, form letters and other printed matter circulated generally among purchasers and prospective purchasers that when merchandise ordered was out of stock and unobtainable, the customer's check would be returned promptly or the amount paid would be promptly refunded and that in all cases the order would be handled to the complete satisfaction of the customer.

PAR. 4. The foregoing statements and representations, direct and implied, were false, misleading, and deceptive. In truth and in fact, during the period of time said catalogs and other advertising were in effect respondents did not have many of the articles of merchandise listed therein in stock nor were they readily available. Further, in many instances, they did not obtain and deliver such articles within a reasonable period of time after they were ordered. In many other instances when the ordered merchandise was shipped, it was only after unreasonable delay. There were many cases where the ordered merchandise was not shipped and the money paid therefor was not refunded.

In those cases where the merchandise ordered was out of stock and unobtainable, respondents did not return the customer's check. It was their practice to cash all checks on receipt. If the merchandise was not shipped, respondents did not make refunds in many cases. In those cases where refunds were demanded, it was respond-

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ents' practice to send the customer a merchandise credit certificate, often after great delay.

Respondents represented that they would redeem the merchandise certificate for cash, when requested, upon receipt of the endorsed merchandise certificate. However, in fact, respondents in many instances failed to redeem the certificates. Also, in many instances, where the orders were filled, and the merchandise was not satisfactory to customers, respondents refused or neglected to make refunds or made them only after unreasonable delay.

When a complaint or demand for refund was made respondents requested the customer to return all papers evidencing the transaction. Thereafter, in many cases, they failed to answer inquiries and requests made by customers.

PAR. 5. The aforesaid acts and practices of respondents, as herein found, were and are all to the prejudice and injury of the public and constituted, and now 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 Black & Co., Inc., a corporation, Home Merchandise Co., Inc., a corporation, and their officers and Leslie F. Black, Hans Jensen, and John M. Zwicki, 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 offering for sale, sale or distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of any goods or merchandise do forthwith cease and desist from directly or indirectly:

1. Advertising goods or merchandise for sale that are not carried in stock or readily available for delivery to purchasers.
2. Accepting payment for ordered goods or merchandise which are not in stock or readily available for delivery to purchasers.
3. Failing to make prompt shipment of advertised goods or merchandise upon receipt of orders and payment therefor.
4. Failing to make prompt refund of the purchase money paid where the goods or merchandise ordered are not shipped.
5. Making refunds to customers in merchandise certificates without having obtained the prior consent of such customers.
6. Failing to promptly redeem merchandise certificates in cash, when requested, after having represented that they would do so.

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7. Failing to make refunds for unsatisfactory goods or merchandise after having represented that they would do so.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 29th day of April 1958, become the decision of the Commission; and, accordingly:

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.

