

Decision

56 F.T.C.

S. D. Quarles Lumber Company, Inc., a corporation, C. T. Smith, Ray S. Campbell, Addie C. Doswell, Elliot Campbell, E. May Campbell, Bessie S. Campbell, shall, within sixty (60) days after service upon them of this modified order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the modified order to cease and desist.

IN THE MATTER OF
FIBER ENTERPRISES, INC., ET AL.

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

Docket 7440. Complaint, Mar. 12, 1959—Decision, May 6, 1960

Order requiring two associated corporations, in New York City and Danbury, Conn., respectively, and their common officer, engaged in reprocessing fur products by separating the hair from the skin and selling the resultant fiber to cloth manufacturers, to cease violating the Wool Products Labeling Act by falsely labeling and invoicing as "Vicuna," "100% Processed Vicuna," etc., interstate shipments of hair fibers which were those of the guanacuito or young guanaco of the "Llama" genus.

Mr. Alvin D. Edelson for the Commission.

Mr. Samuel Young, of New York, N.Y., for respondents and *pro se*.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The respondents are charged with having violated the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that (a) they misbranded certain wool products as "vicuna" whereas in fact said products contained a substantial quantity of other fibers, (b) certain of their products were not labeled as required by §4(a)(2) of the Act and the Rules thereunder, and (c) the fiber content of certain of their products was misrepresented on invoices covering their shipment in commerce.

These charges were denied on behalf of both respondent corporations and himself by respondent Samuel Young, who appeared at the hearings *pro se* and as an officer of each of said corporations. After completion of the hearings, proposed findings, conclusions and order were submitted by counsel supporting the complaint.

Upon the basis of the entire record, the following findings are made, conclusions reached and order issued:

1. Respondent Fiber Enterprises, 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 at 15 East 26th Street, New York City, New York.

Respondent Fairfield Wool Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at Taylor Street, Danbury, Connecticut.

The individual respondent Samuel Young is an officer of both corporate respondents, and formulates, directs and controls the acts, policies and practices of both corporate respondents, including the acts and practices hereinafter referred to. He maintains a business address at the same address as each of the corporate respondents.

2. Part of respondents' business has been for many years and now is that of reprocessing fur products by separating the hair or fur fiber from the skin and selling the resultant fiber to manufacturers of cloth which is later used in making garments. The processing ordinarily is carried on at respondents' Connecticut plant, from where the finished product is transported to purchasers thereof in other states. The record shows shipments from Fairfield Wool Company, Inc., in Danbury, Connecticut, to South Village Mills in Webster, Massachusetts, and to Prince Textile Corp. in Pittsfield, Maine. The billing on these shipments was from Fairfield to Fiber Enterprises, Inc., and from Fiber Enterprises to the recipients in Massachusetts and Maine. All of respondents were involved in these transactions. Invoices of record show purchases by South Village Mills from respondents during 1957 and 1958 of over \$20,000. Thus, subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment into commerce, and offered for sale in commerce, as "commerce" is defined in said Act, wool products, as "wool products" are defined therein.

3. Respondents' product is "wool" under the Wool Products Labeling Act of 1939, the term "wool" being defined in §2(b) thereof as meaning "the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product."

4. Respondents' shipments to South Village Mills and to Prince Textile Corp. were labeled and invoiced variously as "Vicuna."

"Processed Vicuna," "100% Processed Vicuna," "100% Processed Vicuna from old coat skins." Tests of three samples of respondents' materials by a highly qualified expert with 52 years' experience in the Fur Industry, 32 years as a Fur Consultant and three years' research on furs at Columbia University, showed the hair fibers in all three samples to be "those of the Guanaquito," Guanaquito being young Guanaco, a member of the "Llama" genus to which the llama belongs.

5. There was testimony that for many years the term "Vicuna" was used in the industry to refer indiscriminately to the furs of the Guanaco and Guanaquito as well as the true Vicuna, although there are differences in the fineness and quality of the hair fibers. This distinction was recognized and emphasized in the Fur Products Name Guide, issued by the Federal Trade Commission February 8, 1952, since which time such indiscriminate use of the term has been unauthorized and therefore improper. The record indicates quite clearly that the stripped fur which came to respondents as their raw material was also labeled vicuna, but it is also clear that such labeling was incorrect, and respondents' responsibility was to have known the product which they manufactured and introduced in commerce and to have had it properly labeled and invoiced when it left their possession.

6. By the improper labeling of their product, respondents have violated §4(a)(1) and §4(a)(2) of the Wool Act and the Rules and Regulations promulgated thereunder, and by failing properly to identify their product on the invoices issued by them, have misrepresented the fiber content of certain of their products. Thus respondents have engaged in acts and practices which were and are to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

7. The Federal Trade Commission has jurisdiction over the respondents and over the acts and practices which are charged in the complaint, and are herein found, to be in violation of the law. Accordingly,

It is ordered, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Wool Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both 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

1360

Order

distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise 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 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 products, 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.

It is further ordered, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both 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 of textile fabrics, do forthwith cease and desist from representing, on invoices, in advertising, or through any other media, in any manner, directly or by implication, that said fabrics are composed of certain percentages of a particular fiber or fibers, or are substantially composed of a particular fiber or fibers, unless such is the fact.

ORDER MODIFYING INITIAL DECISION, ADOPTING INITIAL DECISION AS MODIFIED AS COMMISSION'S DECISION, AND DIRECTING THAT REPORT OF COMPLIANCE BE FILED

The Commission having by its order of February 18, 1960, extended until further order the date on which the initial decision of

the hearing examiner would become the decision of the Commission; and

The Commission having determined that said initial decision is not appropriate in all respects to dispose of this matter:

It is ordered, That the initial decision be, and it hereby is, modified (1) by striking the last sentence contained in paragraph 2 thereof, (2) by striking paragraph 3 thereof in its entirety, and (3) by redesignating paragraph 4 of the initial decision as paragraph 3 of the initial decision as modified.

It is further ordered, That the initial decision be, and it hereby is, modified to include the following language to be designated as paragraph 4 of the initial decision as modified:

"4. Section 2(b) of the Wool Products Labeling Act defines wool as 'the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama and vicuna) which has never been reclaimed from any woven or felted product.' As noted in paragraph three of the initial decision as modified by the Commission, respondents' fibers were represented on labels and otherwise as 'processed vicuna' or 'vicuna,' which fiber is one expressly permitted by the Act to be identified as 'wool.' The definition in Section 2(e) of the Act for a 'wool product' not only includes products containing wool but extends to any other product which purports to contain or is represented as containing wool, reprocessed wool or reused wool. It follows, therefore, that the fur fiber which the respondents have labeled and otherwise designated as vicuna and have offered for sale, shipped and sold in commerce constituted wool products within the meaning of said Act and were duly subject to the requirements of Sections 4(a)(1) and 4(a)(2) thereof."

It is further ordered, That the second sentence contained in paragraph 5 of the initial decision be, and it hereby is, modified to read as follows:

"The distinction between such furs and the animals producing them was recognized in the Fur Products Name Guide, issued by the Commission on February 8, 1952."

It is further ordered, That the last paragraph of the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

It is further ordered, That respondents, Fiber Enterprises, Inc., a corporation, and its officers; Fairfield Wool Company, Inc., a corporation, and its officers; and Samuel Young, individually and as an officer of both corporations; and said respondents' representa-

1360

Decision

tives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fur fiber, or any other products, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of respondents' products, or the percentages or amounts of the fibers contained therein, in sales invoices or by any other means."

It is further ordered, That the initial decision, as herein modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents 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 as modified.

IN THE MATTER OF

GLOBE RUBBER PRODUCTS CORPORATION ET AL.

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

Docket 7666. Complaint, Nov. 24, 1959—Decision, May 7, 1960

Consent order requiring Philadelphia distributors of rubber products, including swimming ware and household goods, to jobbers and retailers for resale, to cease preticketing some of their products with fictitious and excessive prices, represented thereby as the usual retail price.

Mr. Ames W. Williams for the Commission.

Mr. Daniel Lowenthal of *Fox, Rothschild, O'Brien & Frankel*, of Philadelphia, Pa., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued its complaint in this proceeding against the above-named respondents charging them with violation of that Act in connection with the advertising and sale of rubber products. On March 10, 1960, there was submitted to the undersigned hearing examiner an agreement between the respondents, their counsel and counsel supporting the complaint, providing for the entry of a consent order.

Under the foregoing agreement it is recommended that the complaint be dismissed insofar as it relates to Emanuel Meyer as an individual but not as an officer of the corporate respondent. Mr. Meyer has admitted that he is an officer, director and shareholder in the corporation; he has, however, denied that he formulates, directs and controls the acts and practices of the company. An affidavit by a corporate officer attached to the agreement states that the policies, acts and practices of the corporate respondent are established by action of the Board of Directors of the corporation. The record is devoid of circumstances to support a conclusion that individual liability should attach.¹

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding as to all of the parties, the agreement is hereby accepted, the following jurisdictional findings made and the following order issued:

1. Respondent Globe Rubber Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 3333 North Lawrence Street, in the City of Philadelphia, State of Pennsylvania.

¹ In the matter of Basic Books, Inc., et al., D. 7016, (1959); in the matter of Kay Jewelry Stores, Inc., et al., D. 6445, (1957).

