

Complaint

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IN THE MATTER OF  
COUNTRY TWEEDS, INC., ET AL.

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

*Docket 8085. Complaint Aug. 24, 1960—Decision, Nov. 29, 1962*

Order requiring a New York City manufacturer of ladies' coats, to cease misrepresenting the quality of the cashmere fabric in many coats by such practices as distorting a testing company's test report on the comparative qualities of the "Best Quality Cashmere Produced to Date", which it had used until the time of a business quarrel with the manufacturer, and "Country Tweeds El Elegant" cashmere which it had used since that time; and to cease furnishing its dealers with means to misrepresent its coats by giving them the altered report.

COMPLAINT

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 Country Tweeds, Inc., a corporation, and Marcus Weisman, individually and as an officer 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 Country Tweeds, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 250 West 39th Street in the city of New York, State of New York.

Respondent Marcus Weisman is an officer of the corporate respondent. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including those hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution, among other things, of ladies' cashmere coats to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of

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the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents early in 1958 submitted to United States Testing Company, Inc., a private commercial laboratory, for analysis and report, two pieces of cashmere fabric, one identified by respondents as "Best Quality Cashmere Produced to Date" and the other as "Country Tweeds El Elegant Cashmere." The testing company subjected both pieces to an abrasion test to ascertain resistance to wear, a breaking load test to determine the strength of the warp and filling yarns, and a dry cleaning test to show its effect on the appearance of the fabric. In its report to respondents on each of the aforesaid tests, which consisted of several pages, the testing company used the same descriptions to identify the fabric samples as the respondents had used when submitting the materials, thus the report showed the test results of respondents' cashmere compared to test results of the alleged "Best Quality Cashmere Produced to Date".

PAR. 5. Respondents thereafter altered the report of the testing company by deleting certain portions and by adding new statements. Parts of the testing company's report consisting of its letterhead, client designation, subject, number, and date, and the signatures of the two officers of the testing company who had signed the report, were reproduced on respondent's version of the testing company's report thus giving it the appearance of an authentic report. The body of the report was changed. The testing company's report of the abrasion test, besides other information, contained the following statement:

We list below the number of cycles necessary to produce the above mentioned degree of wear.

<i>Best Quality Cashmere Produced to Date</i>	<i>Country Tweeds El Elegant</i>
<u>673</u>	<u>715</u>

*Comment:* Test results indicate no significant difference in abrasive resistance between the two submitted samples. It is noted that there is no significant difference in "roughing up" in the intermediate stages of wear.

In the altered report produced by respondents the foregoing quoted statement was excised and the following paragraph was substituted:

*Abrasion Test:* COUNTRY TWEEDS El Elegant 100% Cashmere lasts 6.3% longer than Best Quality Cashmere produced to date.

The testing company's report of the breaking load test was as follows:

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## Average Breaking Load (Pounds)

<i>Best Quality Cashmere Produced to Date</i>		<i>Country Tweeds El Elegant</i>	
Warp	Filling	Warp	Filling
29.6	14.5	28.5	22.7

This portion of the testing company's report was deleted and respondents' version was substituted which was as follows:

*Breaking Load Test:* Country Tweeds El Elegant 100% Cashmere proves 56.5% stronger than Best Quality Cashmere produced to date.

PAR. 6. Respondents furnished copies of the said altered report to the dealers of its products throughout the United States, and it was used by some of said dealers in advertising respondents' products purchased by them.

Through the use of said altered report respondents represented, and furnished its dealers the means and instrumentality by and through which they were enabled to and did represent:

(1) That the cashmere fabric involved in the test with respondents' El Elegant fabric was the best quality cashmere fabric produced up to the date of the test and that United States Testing Company, Inc., had so found prior to the test.

(2) That respondents' cashmere fabric was the best quality on the market at the time of the test.

(3) That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

PAR. 7. Said statements and representations were false, misleading and deceptive. In truth and in fact:

(1) The cashmere fabric involved in the test with respondents' El Elegant fabric was not the best quality cashmere fabric produced up to the date of the test, and the United States Testing Company, Inc., had not so found prior to the test.

(2) Respondents' cashmere fabric was not the best quality cashmere on the market at the time of the test.

(3) Respondents' altered report was not authentic and did not represent a true or complete reproduction of the results of said test. Among other things, it omitted the numerical test results of the abrasion and breaking load test; the method of tests; and the testing company's comments regarding the abrasion test, all of which were necessary to correctly interpret the test results. In addition, instead of the numerical results of the abrasion and breaking load tests shown in the original report, respondents expressed the comparative results in terms of percentages which, coupled with the fact that certain

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information was omitted, distorted the actual results in favor of respondents' fabric.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of cashmere coats of the same general kind and nature as those sold by respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and have caused consumers to purchase substantial quantities of respondents' garments because of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all 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.

*Mr. Charles W. O'Connell* supporting the complaint.

*Barshay & Frankel*, by *Mr. Nathan Frankel* of New York, N.Y., for respondents.

## INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

The complaint in this matter issued on August 24, 1960, charges the above-named respondents, manufacturers of cashmere ladies' coats, with altering a test report received from an independent fabric testing company and using the test report as altered to make certain false, misleading, and deceptive representations in violation of the Federal Trade Commission Act.<sup>1</sup> The complaint further charges that the respondents furnished copies of altered report to its dealers by means of which the dealers were enabled and did make the same false, misleading and deceptive representation in violation of the Act. Both the original test report and the altered test report deal with two pieces of cashmere fabric identified as "Best Quality Cashmere Produced To

<sup>1</sup> Section 5 (a) (1), here pertinent, reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

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Date" and "Country Tweeds El Elegant Cashmere", respectively. These terms were supplied to the testing company by respondents. The piece identified as "Country Tweeds El Elegant Cashmere" was a sample of the fabric used by respondents in the manufacture of coats from the year 1958 to the present time. The piece identified as "Best Quality Cashmere To Date" was a sample of a fabric formerly used by respondents in the manufacture of ladies' cashmere coats. (Although the complaint does not expressly allege that the last mentioned fabric was not used by respondents in the manufacture of ladies' cashmere coats at the times herein material, such an allegation clearly appears by implication from the complaint and the record as established at the hearing herein bears out this implied allegation as an admitted fact.)

The complaint charges that the aforementioned false, misleading and deceptive representations were as follows: (1) That the cashmere identified by respondents as the "Best Quality Cashmere Produced To Date" was the best quality cashmere fabric produced up to the date of the test and that the testing company had so found prior to the test; (2) That respondents' "Country Tweeds El Elegant Cashmere" was the best quality on the market at the time of the test; and (3) That respondents' altered version of the testing company's report was authentic and represented a true and complete reproduction of the results of said test.

Respondents in their answer admit<sup>2</sup> that they made the three representations set forth above but take issue with counsel supporting the complaint that the said representations were false, misleading and deceptive and in violation of the provisions of the Act. The central issues in this proceeding are thus these: (1) Are the said representations false, misleading and deceptive? (2) If so, do these

<sup>2</sup> "PARAGRAPH FOURTH" of the answer reads in part: "they [respondents] admit that copies of said altered report were sent to dealers of the corporate respondent's products; they admit that through the use of the altered and paraphrased report, a representation was made that the altered version of the testing company's report was authentically verbatim and that the quality of the corporate respondent's cashmere fabric was superior to any other cashmere fabric previously produced, and that the testing company has so found." These statements of admissions are deemed admissions that respondents made the representations shown above as (2) and (3). The failure of the answer to specifically answer the allegation of the complaint ("PARAGRAPH SIX (1)") that respondents also made the representation shown as (1) above is deemed an admission that such representation was made. In this connection other allegations in respondents' answer (see "PARAGRAPH FIVE") are pertinent which read as follows: "They [respondents] \* \* \* allege that the corporate respondent's cashmere fabric was the best quality cashmere fabric produced up to the date of the test; that the United States Testing Company, Inc. had in effect found; [sic—it is obvious that the foregoing semi-colon was an unintentional punctuation at the point where it appears as it breaks a thought or sentence into two.] that the corporate respondent's cashmere fabric was the best quality cashmere on the market at the time of the test \* \* \*".

representations 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?

Except for the affirmative defense hereinafter noted, all other issues raised by the pleadings are minor in nature and have been resolved by the evidence in the record.

The answer also raises an affirmative issue of jurisdiction in that it alleges that the Federal Trade Commission lacks jurisdiction to entertain the instant proceeding on the grounds that the practices described in the complaint were discontinued prior to the issuance of the complaint; that others have committed the same practices, that respondents' participation in the said practices was inadvertent and not the result of design, and that "no reasonable basis exists for any conclusion that respondents, or either of them, might in the future renew practices set forth in the complaint".

Hearing was held at New York, New York on various dates over a period of ten days between August 16 and November 9, 1961. Thereafter proposed findings of fact, conclusions of law, original and reply briefs were filed by the parties. These have been carefully reviewed and considered and such proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance are rejected as not supported by the record or as involving immaterial matters. The facts hereinafter set forth are based on the entire record.

#### FINDINGS OF FACT

Respondent, Country Tweeds, Inc., hereinafter called Country Tweeds, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 250 West 39th Street, New York, New York. The other respondent, Marcus Weisman, of the same address, is an officer of the corporate respondent which he founded some twenty years ago. He formulates, directs and controls the acts, practices and policies of the corporate respondent, including those hereinafter set forth.

Country Tweeds is a manufacturer of ladies' outerwear coats, with sales in recent years in excess of \$5,000,000. It manufactures ladies' coats made of cashmere or a combination of wool and other materials. In 1958 about 50 percent of its production was of ladies' coats made of cashmere. In 1957 and 1958, it manufactured and sold between 35,000 and 40,000 ladies' coats made exclusively of cashmere and lesser quantities in 1959 and 1960. Country Tweed cashmere coats are made

to retail between \$135 and \$155. In the course and conduct of their business, respondents for many years have shipped or caused to be shipped the coats they manufacture from their plant in the State of New York to purchasers located in various other States. At all time herein material, respondents have maintained a substantial course of trade in ladies' coats in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the year 1957 and in the years prior thereto, Country Tweeds manufactured its ladies' cashmere coats out of a cashmere fabric made by Einiger Mills, Inc., hereinafter called Einiger, the largest and best known manufacturer of cashmere fabrics. As a result of a business quarrel, Country Tweeds terminated its cashmere fabric purchases from Einiger some time in 1957. Commencing in 1958 and in all subsequent years, Country Tweeds made its cashmere coats out of cashmere fabric supplied to it by Cashmere Fabrics, Ltd., hereinafter called Cashmere Fabrics. The latter does not own or operate any manufacturing plants but purchases the raw cashmere fiber and sub-contracts for its spinning, dyeing, and weaving with other firms engaged in such manufacturing activities. In 1958 and 1959, the coats manufactured by Country Tweeds out of cashmere fabrics supplied to it by Cashmere Fabrics were sold under the brand name of "Country Tweeds El Elegant". In 1958, Cashmere Fabrics derived 80 percent of its sales from Country Tweeds and in 1960 this volume had increased to 90 percent.

On or about February 4, 1958, respondents submitted to the United States Testing Company, Inc., a private commercial laboratory, for analysis and report, two pieces of cashmere fabric. One of these pieces was manufactured by Einiger but the manufacturer was not disclosed to the testing company. As heretofore noted, Country Tweeds in 1958 was no longer using cashmere fabric manufactured by Einiger. Country Tweeds in submitting the Einiger piece to the testing company denominated and identified it as "The Best Quality Cashmere Produced to Date", but without the use of quotation marks as shown here. The other piece was manufactured under the auspices of Cashmere Fabrics but its manufacturer was similarly not disclosed to the testing company. As heretofore noted, Country Tweeds in 1958 and subsequent years was using cashmere fabrics received from Cashmere Fabrics. Country Tweeds in submitting the Cashmere Fabrics piece to the testing company denominated and identified it as "Country Tweeds El Elegant". The written memorandum or request submitting the two pieces for testing contains the following instruction: "For comparison test in non-technical terms." The memoran-

