

Complaint

62 F.T.C.

from the fact that its thinner slices enables the consumer to conveniently serve and consume smaller individual portions.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any such food product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

*It is further ordered*, That the hearing examiner's initial decision, as modified by the Commission's opinion, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered*, That respondent National Bakers Services, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order set forth herein.

Commissioner Anderson not participating for the reason that he did not hear oral argument, and Commissioner Higginbotham not participating by reason of the fact that this matter was argued before the Commission prior to the time when he was sworn into office.

---

IN THE MATTER OF

FORTE-FAIRBAIRN, INC., ET AL.

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

*Docket 8453. Complaint, Nov. 17, 1961—Decision, Apr. 13, 1963*

Order dismissing as not sustained by the evidence, complaint charging Boston, Mass., manufacturers of wool products with representing fiber stocks falsely on invoices as "Baby Llama".

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 Forte-Fairbairn, Inc., a corporation, and Orville W. Forte, Jr., Donald Forte, and Boyce W. Godsoe individually and as officers 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 Forte-Fairbairn, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 311 Summer Street, Boston, Massachusetts. Said respondent corporation is a manufacturer of wool products, and operates its woolen and specialty fiber stocks business through its division known as Forte, Dupee, Sawyer Co. whose address is the same as the corporate respondent. Individual respondents Orville W. Forte, Jr., Donald Forte and Boyce W. Godsoe are president, treasurer, and vice president and assistant treasurer respectively. Said individual respondents formulate, direct and control the acts, practices and policies of said corporate respondent. The office of the individual respondents is the same as that of the corporate respondent.

PAR. 2. Corporate respondent through its division Forte, Dupee, Sawyer Co. is now, and for some time last past has been, engaged in the sale of woolen and specialty fiber stocks and distributing such products throughout the United States.

PAR. 3. Respondents, in the course and conduct of their business, now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the Commonwealth of Massachusetts to purchasers located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents have made representations concerning their said products on sales invoices. Among and typical of the representations made was the invoicing of their fiber stocks as "Baby Llama".

PAR. 5. The aforesaid representations were false, misleading and deceptive. In truth and in fact, said fiber stocks were not composed wholly of "Baby Llama" but were composed of fibers other than baby llama.

PAR. 6. The acts and practices set out above have had and now have the tendency and capacity to mislead and deceive purchasers of said products as to the true content of said fiber stocks, and to cause such purchasers to misbrand and misrepresent products manufactured by them in which said fiber stocks were used.

PAR. 7. In the course and conduct of their business and at all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms, and individuals in the

Initial Decision

62 F.T.C.

sale of woolen and specialty fiber stocks of the same general kind and nature as that sold by respondents.

PAR. 8. The acts and practices of the respondents set out above 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. Michael P. Hughes* and *Mr. Harry Garber* supporting the complaint.

*Ely, Bartlett, Brown & Proctor* by *Mr. David E. Place*, of Boston, Mass., and *Howrey, Simon, Baker & Murchison* by *Mr. David C. Murchison* and *Mr. Richard L. Perry*, of Washintgon, D.C., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MARCH 5, 1963

This proceeding was commenced by the issuance of a complaint on November 17, 1961, charging the above-named corporate respondent and the individual respondents with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act by falsely identifying fiber stocks on invoices as "Baby Llama" when actually they were not composed wholly of "Baby Llama" but were composed of fibers other than baby llama.

Upon being served with the complaint, respondents appeared by counsel and denied the charges of falsely invoicing their fiber stocks. Pursuant to notice duly given, a prehearing conference was held in this matter at Washington, D.C. on March 14, 1962, and the initial hearing was held from October 8, through October 17, 1962, at New York, New York, and on December 5, 1962, at Washington, D.C. At these hearings, testimony and other evidence were offered in support of and in opposition to the allegations of the complaint. At the end of the hearing on December 5, 1962, the record was closed, and, in due course, both parties filed proposed findings of fact, conclusions of law, and briefs in support thereof. Consideration has been given to the proposed findings of fact, conclusions of law, and briefs submitted by the parties and all proposed findings of fact hereinafter not specifically adopted are rejected. Based upon the entire record and his observation of the witnesses, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order.

## PRELIMINARY STATEMENT

At the outset, in order to put this matter in proper perspective, it should be noted that the charges in the complaint and, as hereinafter found, relate to a single sale by respondents of several lots of fiber stocks sold to Northfield Mills, Inc., 35 Kneeland Street, Boston, Massachusetts, on November 25, 1959, and invoiced as "Baby Llama." The sole issue in this proceeding is whether the fiber stocks involved in this single sale were in fact composed wholly of "Baby Llama" or as alleged in the complaint composed of fibers other than "Baby Llama." The fibers in question were imported into the United States in 1956 and 1957 from Peru through various firms, and complaint counsel has meticulously traced by testimony and documents consisting of shipping records, purchase memoranda, sales receipts, lot cards, processing records, invoices, etc., the history of these fibers from their importation until they were sold on November 25, 1959, to Northfield Mills. Respondents also admit that the fibers imported in 1956 and 1957 are the same fibers that were ultimately sold by them to Northfield Mills in 1959 and delivered in early 1960. In short, there is no dispute as to the whereabouts and disposition of these fibers at all times between 1956 and 1960, and all references to fibers as hereinafter made in the findings relate to all or a portion of the fibers hereinabove identified.

## FINDINGS OF FACT

## Formation and Control of Respondent Corporation

1. Respondent, Forte-Fairbairn, Inc., is a corporation organized, existing and doing business since 1952 under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 311 Summer Street, Boston, Massachusetts. The respondent corporation is a manufacturer of wool products, but is divided into several departments: the wool department; specialty fibers department—which includes alpaca, llama and mohair; cashmere department; the noils department, and waste department. Individual respondent, Orville W. Forte, Jr., from January 2, 1959, to March 1961,<sup>1</sup> was a vice president of Forte-Fairbairn and head of the cashmere department. In that capacity, he had no responsibility for the specialty fibers department and, in particular, had no personal knowledge of, responsibility for or complicity in the acts or practices alleged in the complaint relating to the sale on November 25, 1959, to Northfield Mills of fibers invoiced as "Baby Llama." Accordingly, at the

<sup>1</sup> On March 1, 1961, Orville W. Forte, Jr., became president of Forte-Fairbairn succeeding his father, Orville W. Forte.

close of complaint counsel's case-in-chief, the hearing examiner granted a motion to dismiss the complaint insofar as it related to Orville W. Forte, Jr., in his individual capacity, but not in his capacity as an officer or agent of the corporate respondent.

Individual respondent, Donald Forte, is the salesman who negotiated the November 25, 1959, transaction and respondent, Boyce W. Godsoe, is the head of the specialty fibers department who was personally responsible for changing the designation of the fibers on the invoices to "Baby Llama." In these capacities, Donald Forte and Boyce W. Godsoe had personal knowledge of and were responsible for the acts and practices of the corporate respondent.

2. Forte-Fairbairn, Inc., is a closely held corporation and controlling interest at all times material to this complaint has been held by members of the Forte family. In addition, members of the Forte family predominate on its board of directors and serve as its principal executive officers. Boyce W. Godsoe is one of the larger minority stockholders.

3. Forte, Dupee, Sawyer Co., hereinafter referred to as Forte Dupee, was incorporated in Massachusetts in 1922. It also is a closely held corporation and controlling interest at all times material to this complaint has been held by members of the Forte family. As in the case of Forte-Fairbairn, members of the Forte family predominate on the board of directors and serve as principal executive officers of Forte Dupee. Boyce W. Godsoe is also one of its principal minority stockholders.

On January 1, 1959, Forte-Fairbairn acquired the inventories of Forte Dupee including the stocks on hand in its wool and specialty fiber department. After January 1, 1959, Forte Dupee<sup>2</sup> was merely a division of Forte-Fairbairn. Prior to January 1, 1959, Boyce W. Godsoe was in charge of the specialty fiber department of Forte Dupee and after that date was chief of the specialty fiber department of Forte-Fairbairn.

4. Forte-Fairbairn, through its Forte Dupee division, is now, and since January 1, 1959, has been engaged in the sale and distribution of woolen and specialty fiber stocks throughout the United States.

5. Respondents, in the course and conduct of their business, now cause, and for some time last past have caused, said products, when sold, to be shipped from their place of business in the Commonwealth of Massachusetts to purchasers located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

<sup>2</sup> On January 2, 1959, Forte, Dupee, Sawyer Co. changed its name to Forte Investment Fund, Inc.

In the course and conduct of their business and at all times mentioned herein, respondents have been and are in substantial competition, in commerce, with corporations, firms, and individuals in the sale of woolen and specialty fiber stocks of the same general kind and nature as that sold by respondents.

#### Classification of the Llamas

6. The genus *Llama* is subdivided into two distinct species, *lama glama* and *lama vicuna*, both of which are part of the family *camelidae*. The *lama glama* species is further subdivided into *lama glama pacos* (the alpaca), *lama glama glama* (the llama), and *lama glama huanaca* (the guanaco). The habitat of the llama tribe, except the guanaco, is the high Andean regions of Southern Ecuador, Peru, Bolivia and Northwestern Argentina. Both the llama and alpaca have been domesticated for over 1200 years. All of the llamas are smaller in size and lighter in build than the camels.

7. The outer coat of the llama is thick and coarse and the hair next to the body is much finer closely resembling those of the alpaca. The young llama is left with its mother for about a year, after which it is placed in flocks. When about 4 years old, the males and females are separated, the former being trained to their tasks as burden carriers, the latter being sent to pasturage, for the females are used exclusively for breeding purposes and for their hair. Usually the males are never shorn until death, the hair being permitted to grow to form a cushion for the pack. The llama's economic importance is as a burden carrier and apparently always will be, for it remains today the only reliable draught animal of the upper Andes.

8. The alpaca is somewhat shorter than the llama, but its body is proportionately larger and of greater bulk. The hair of the alpaca hangs down its sides, rump, and breast in long glossy and more or less tangled strands, measuring from 8 to 12, and not infrequently, 16 inches in length, and when left unshorn for long periods will attain lengths of nearly 30 inches. This hair differs from that of the llama in having no coarse or brittle fibers, which are of common occurrence in the fleece of the llama. The alpaca has occupied a major position in the economic life of the great Andean Plateau and its position as a fleece bearer is unchallenged. For this reason, the alpaca is of specific importance to the textile industry.

9. Due to the difference in length and texture, the fleece of the adult alpaca may be distinguished by relatively simple methods of testing from the fleece of the adult llama. In contrast, the fleece of the baby alpaca and baby llama are of similar length and texture and cannot be distinguished either by ordinary sensory perception or simple methods

## Initial Decision

62 F.T.C.

of testing. It should also be noted that the importation and use of adult alpaca fibers in comparison to the importation and use of baby alpaca or baby llama fibers is much greater. Actually, the availability of baby llama or baby alpaca fibers is very restricted.

## Importation of the Fibers

10. In August 1956, Curt W. Haedke of C. Haedke & Co., New York, New York, importers of specialty fibers and Emilio Salomon of Emilio Salomon Sahurie G., Arequipa, Peru, exporters of alpaca and llama fibers, called upon Boyce W. Godsoe, head of the specialty fibers division of Forte Dupee, and his assistant, William J. Hobbs, at which time Godsoe and Hobbs ordered several shipments of baby alpaca fibers pulled from skins (Tr. 93, 309). On August 31, 1956, Hobbs confirmed the purchase of 6 bales of "Kid Alpaca Fleece" (CX 40) and, on December 3, 1956, Hobbs confirmed the purchase of 14 bales of "Baby Alpaca Fleece" (CX 42) from C. Haedke & Co.

11. By invoice of Emilio Salomon Sahurie G., Arequipa, Peru, dated August 16, 1956 (CX 39A, 39B), 6 bales of alpaca fleece were shipped to C. Haedke & Co., New York, and by invoice of Emilio Salomon dated November 16, 1956 (CX 41A, 41B), 14 bales of alpaca fleece were shipped to Forte Dupee. On September 12, 1956, C. Haedke billed Forte Dupee for 6 bales of callao alpaca seconds<sup>3</sup> (CX 10), and on November 30, 1956, C. Haedke billed Forte Dupee for 14 bales of alpaca fleece (Baby Alpaca) (CX 17).

In 1956 and 1957, Godsoe and Hobbs also ordered from Franz Rotmann, Arequipa, Peru, an exporter of fibers and skins, several shipments of "baby alpaca skins." Shipping advices confirming these orders and describing the shipments as "white baby alpaca skins," "baby alpaca skins in colors" and "Baby Alpaca Skins" were sent by Rotmann to Forte Dupee (CX 47, CX 56, CX 67).

12. The invoices of Emilio Salomon Sahurie G. (CX 39A, 39B, CX 41A, 41B), and the shipping advices of Franz Rotmann (CX 47, CX 56, CX 67) were prepared in the regular course of business at the time of the shipments by clerks in the offices of these concerns in Arequipa, Peru. The clerks who prepared these documents do not speak English, but merely copy the pertinent information, including the description of the fibers from other documents (Tr. 361, 364). Actually, Mr. Salomon and Mr. Rotmann, or the clerks who prepared these documents, as a matter of practice, never see the fibers but merely

<sup>3</sup> C. Haedke testified that only two classes of customs export designations existed in Peru and that there was no classification for baby alpaca fibers so they were listed under the lower classification as "Callao Alpaca Seconds" (Tr. 370, 376). However, when the error was brought to Haedke's attention by Godsoe, Haedke admitted the error (Tr. 199) and changed it to "Baby Pulled Alpaca" (Tr. 101).