

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lake Region Packing Association is a cooperative association and a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 11 South Barrow Avenue, Tavares, Fla., with mailing address as P. O. Box 1047, Tavares, Fla.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That the respondent Lake Region Packing Association, a corporation, and its officers agents, representatives and employees, directly or through any corporate or other device, in connection with the sale of citrus fruit, or fruit products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting, or allowing, directly or indirectly, to any buyer or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

It is further ordered, That the respondent herein 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 this order.

IN THE MATTER OF

ALSCAP, INC., ET AL.

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

Docket 8292. Complaint, Mar. 2, 1961—Decision, Feb. 14, 1962

Order requiring New York City importers to cease misrepresenting the fiber content of wool products, including fabrics and skirts, imported from Italy.

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Alscap, Inc., a corporation, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation; and Lopa of Italy, Ltd., a corporation, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling 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. Respondents Alscap, Inc., and Lopa of Italy, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Luba Scapa and Joseph Scapa are officers of corporate respondent Alscap, Inc.; and respondents Bernard Kaplan and Joseph Scapa are officers of corporate respondent Lopa of Italy, Ltd. Respondents Luba Scapa and Joseph Scapa formulate, direct and control the acts, policies, and practices of corporate respondent Alscap, Inc., including the acts and practices hereinafter referred to. Respondents Bernard Kaplan and Joseph Scapa formulate, direct and control the acts, policies and practices of corporate respondent Lopa of Italy, Ltd., including the acts and practices hereinafter referred to. All respondents have their office and principal place of business at 97 Fifth Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have imported from Italy and introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

PAR. 3. Certain of wool products, namely woolen fabrics and ladies' skirts, were misbranded by respondents 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 constituent fibers contained therein. Among such misbranded wool products were woolen fabrics and ladies' skirts imported from Italy by respondents, said fabrics being labeled or tagged

by Alscap, Inc., "60% Rep. wool, 5% nylon, 35% wool", "95% Rep. wool, 5% nylon" and "30% Rep. wool, 70% rayon" and said ladies' skirts being labeled or tagged by Lopa of Italy, Ltd., as consisting of "95% reprocessed wool, 5% nylon", whereas, in truth and in fact said woolen fabrics and ladies' skirts in each instance contained substantially less woolen fiber than was represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the importation and sale of said wool products, including imported woolen fabrics and ladies' skirts.

PAR. 6. The acts and practices of the respondents as set forth in paragraphs 3 and 4 above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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 and *Mr. Arthur Wolter* for the Commission.

Mr. Leo Giltlin, of New York, N.Y., for the respondents.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

In a complaint issued March 2, 1961, the Federal Trade Commission charged all the respondents herein with violating the Federal Trade Commission Act and the Wool Products Labeling Act of 1939. The respondents are Alscap, Inc., a New York corporation, its officers Luba Scapa and Joseph Scapa, and Lopa of Italy, Ltd., also a New York corporation, its officers Bernard Kaplan and Joseph Scapa, all doing business at 97 Fifth Avenue, New York, N.Y.

Although it is not at once apparent from the complaint, the two corporations are not joined together in all the transactions with respect to which the violations are alleged. Alscap and its officers are charged with violations concerned with the labeling or tagging of cloth imported by them from Italy; Lopa of Italy, Ltd., and its officers (Joseph Scapa being common to both corporations) are charged with violations concerned with the labeling or tagging of skirts imported

by them from Italy. During the course of the hearing it appeared, however, that for accommodation purposes, while the skirt importation was a Lopa transaction, Alscap had initiated the purchase for Lopa's account.

It was alleged that the cloth which Alscap "imported from Italy and introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce" was "falsely and deceptively labeled or tagged . . . '60% Rep. wool, 5% nylon, 35% wool', '95% Rep. wool, 5% nylon' and '30% Rep. wool, 70% rayon'." It was also alleged that Lopa had similarly imported and distributed or sold ladies' skirts deceptively tagged or labeled " '95% reprocessed wool, 5% nylon'." The deception, it was alleged, arose from the fact that in each instance substantially less woolen fiber was contained than represented and that these misbrandings constituted violations of Sections 4(a)(1) and 4(a)(2) of the Wool Products Labeling Act and the Regulations promulgated thereunder. The respondents, being in competition with others engaged in the importation and sale of wool products such as those involved herein, were charged also with engaging in unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The respondents appeared herein by counsel and filed two answers—one on behalf of the corporations and the other on behalf of the individuals. The corporations, while admitting that they imported certain wool products from Italy, denied all other material allegations of the complaint insofar as they were concerned. They alleged, in addition, three defenses. The first was that the goods referred to in the complaint were sold only to purchasers in the State of New York and consequently had not been introduced into commerce, as that term is defined in the Wool Products Labeling Act. The second defense was, in effect, a good faith reliance on the manufacturers in Italy and their agent in Italy who were concerned with the labeling and checking of the labels to make certain that they truthfully stated the wool content. Respondents alleged that the labels had been placed on the goods by the manufacturers, not by them, and that they had done nothing which would result in violation of the Act. They alleged further that they had paid import duties in accordance with the higher wool content representation set forth on the labels. The third defense was that they exercised due care and that any variation in the amount of wool content of the goods imported from the representations set forth on the labels or tags "resulted from unavoidable variation in manufacture" and, therefore, was subject to the defense afforded

by the proviso in subparagraph (A) of subdivision (2) of Section 4(a) of the Act. The individual respondents alleged similar defenses and, in addition, contended that the importations were by the corporations, not by them as individuals or officers, and that they, as individuals and officers, had nothing to do with the labeling and tagging.

The case has been fully heard, the parties have submitted requests to find and proposed conclusions and orders and the case is now fully submitted.

Insofar as the individual respondents contend that they should not, in any event, be held involved in this matter because they personally had nothing to do with the labeling and tagging and because their only connection was as officers or directors of the corporations which engaged in the importations and sales, it is my finding and ruling that the two corporations are closed corporations wholly owned by the individuals or their families (although Alscap is separate from Lopa and Bernard Kaplan has no interest in Alscap). Luba Scapa is Joseph Scapa's wife. Joseph Scapa owns 40% of Alscap, Luba, 30% and Joseph's brother, Michael, the remaining 30%. Bernard Kaplan and Joseph Scapa each own 50% of the stock of Lopa. Joseph is secretary and treasurer and a director of both Alscap and Lopa. Luba is president and a director of Alscap. Kaplan is president and a director of Lopa. They formulate, direct and control the acts, policies and practices of their respective corporations and as such are subject to remedial action if the allegations of the complaint are sustained against the corporations. Consequently, wherever reference is made hereafter either to Alscap or to Lopa, such reference in the case of Alscap shall be deemed to include both Luba and Joseph Scapa and, in the case of Lopa, both Bernard Kaplan and Joseph Scapa.

Because of the great sincerity and earnestness with which respondents' counsel has pleaded the case on behalf of the respondents, at the risk of being laborious, I shall develop in some detail my reasons for making the conclusions hereinafter set forth.

Fundamentally, a misbranding or deceptive labeling case is not very much different from cases such as *Glanzer v. Shepard*, 223 N.Y. 236, 135 N.E. 275; and *Ultramares Corp. v. Touche*, 255 N.Y. 170, 174 N.E. 441, involving negligence of words. The main difference is that in cases such as *Glanzer* and *Ultramares*, the injured person is given the remedy, while in the cases under the Wool Products Labeling Act, the public is injured and the remedial action is taken on behalf of the public by the Federal Trade Commission. In such cases as *Glanzer* and *Ultramares*, the obligation may be self-assumed or imposed by

reason of the relationship of the party charged to the person injured. In our case, the obligation is imposed by law.¹

These respondents are charged with introducing into commerce goods which were misbranded or deceptively labeled. Under the statute they must be deemed to have made the representations set forth in the branding or labeling. We might say here, paraphrasing Justice Cardozo, then Chief Judge of the New York State Court of Appeals, in *Ultramares* (at p. 189 N.Y. Reports and p. 448 in the N.E. Reporter), the respondents certified as a fact, true to their own knowledge, that the wool contents of the goods involved were in accordance with the labels. If the labels were false, the respondents are not to be exonerated because they believed them to be true.

Here, not like in *Lambert v. California*, 355 U.S. 225, but as suggested in that case, the respondents, by engaging in the business with respect to which this legislation was enacted, must at their peril become informed of its requirements and do all that is required of them under the legislation. This legislation imposes on persons engaged in the business of introducing into and selling or distributing wool products in commerce the obligation not only to label such products as to their wool content, but to make certain that the labeling is truthful and within the requirements of the statute.

The purpose of the statute, as stated in its title, is "To protect producers, manufacturers, distributors and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products, . . ." Alscap's purpose in importing the cloth was to sell to manufacturers who ultimately would sell to consumers or both to distributors and consumers. These were persons sought to be protected by the Act. Lopa's purpose in importing the skirts was to sell to a distributor who, in turn, would sell to consumers. These were persons sought to be protected by the Act. The protection afforded by the Act to manufacturers and distributors, as distinguished from consumers, is additional in that not only should these manufacturers and distributors be certain that what they think they are buying actually is what they are buying, but they should be protected from, in turn, unwittingly making false representations to their purchasers by adopting the representations made to them by their suppliers.

Insofar as it is contended on behalf of the respondents that they were not engaged in commerce, both the Federal Trade Commission Act and the Wool Products Labeling Act define commerce as being that "with foreign nations . . . or between . . . any state or foreign

¹ We are not here concerned with willful, intentional deception, fraud or misbranding.

nation," Both Alscap and Lopa caused the goods involved to be exported from Italy and imported into the United States. In addition, it appears that Alscap made at least three sales of either of the fabrics imported by it from Italy to purchasers outside the State of New York. Consequently, the defense that the respondents were not engaged in commerce within the meaning of the Acts is overruled.

As stated above, Alscap imported cloth while Lopa imported skirts. The importations of cloth will be discussed first.

The first of the Alscap importations consisted of two lots of cloth costing \$291.16—one, $156\frac{3}{4}$ yards called "SARA"; the other, $312\frac{7}{8}$ yards called "MIRELLE." Both lots were brought into the United States late in February or early March 1959 under Customs Entry 916693 and were tagged as consisting of 30% reprocessed wool and 70% nylon. Respondents were requested by Customs to submit samples. After testing by the Federal Trade Commission expert, it was found that "SARA" contained 13.8% acetate, 63.0% residue (rayon, nylon, some cotton) and 23.2% wool, while "MIRELLE" contained 8.3% acetate, 68.1% residue (mostly rayon, some nylon) and 23.6% wool. Although the difference between 23 plus percent and 30% is less than 7% of the entire fabric content, the difference between the actual wool content and the represented wool content is $22\frac{2}{3}\%$ in one instance and $21\frac{1}{3}\%$ in the other. Consequently, there was a misbranding and deceptive labeling as to the importation of these two lots.

Alscap imported from Italy in about September 1959 35 bales of flannel cloth, identified as "PISA", consisting of $13,725\frac{3}{8}$ yards, valued at over \$10,000. This was labeled or branded as consisting of 95% reprocessed wool and 5% nylon. On analysis, a swatch thereof obtained from one of Alscap's customers was found to contain 85.1% wool, 0.9% acetate, 14.0% residue (mostly nylon, traces of miscellaneous). Although the wool differential amounted to 9.9% of the entire fabric, the differential in the actual wool content from the represented wool content amounted to 10.4%.

In about January 1960, Alscap imported into the United States from Italy $10,578\frac{3}{4}$ yards of flannel fabric valued at about \$7,300. This fabric was labeled or branded as 60% reprocessed wool, 5% nylon and 35% wool. A swatch of this fabric obtained from one of Alscap's customers was found to contain 89.3% wool, 0.5% acetate and 10.2% residue (nylon, some rayon, orlon, cotton). Although the wool differential in the entire fabric amounted to 5.7%, the differential in the

actual wool content from the represented wool content amounted to 6%.

The only objections made by respondents to the tests were, first, that too small a piece from the swatches involved had been used and second, that, in any event, Alscap had not imported the fabrics identified as "SARA" and "MIRELLE" for sale in commercial quantities. They said that these had been imported only for the purpose of obtaining and providing for prospective customers samples of the materials.

The objection that the tests of the small pieces from the swatches involved was not a correct testing procedure has been decided adversely in *Milwaukee Allied Mills, Inc., et al.*, Docket 7112. There the Commission said:

The respondents claim the testing procedure was incorrect, not because of the type of test performed and not because of the professional competence of the person making the test, but only because the test consisted of a small corner from each exhibit. The respondents' contention is premised on the basis that they are under no duty to produce a homogenous mixture so that the woolen content of the batting will be evenly distributed throughout. We must reject this contention. This is the very situation that the legislation was designed to correct.

The objection based on the contention that the importations involved consisted only of materials intended for samples is not well taken in view of 16 CFR 300.22, which provides that samples, swatches or specimens subject to the Act and used to promote sales must be "labeled or marked to show their respective fiber contents and other information required by law." Apart from the fact that one lot of over 156 yards and another lot over 312 yards were imported and thereby became subject to the Act, the Regulation promulgated under the Act extends to samples the same marking or labeling obligations as are required for sales in commercial quantities. Pursuing this objection, respondents' counsel insisted on the production by Commission counsel of a piece of material (and the test related thereto) which was sampled from later importations which had been the subject of sales in commercial quantities. When Commission counsel was directed to produce this sample and test, it developed that, although the differential in wool content based on the entire fiber content amounted only to 4.1%, the percentage differential of the actual wool content from the represented wool content amounted to 13 $\frac{2}{3}$ %. Thus, although not injected as an issue by Commission counsel, it developed that the goods subsequently imported and sold in commercial quantities also had a large differential of wool content.

Sometime during 1959, Lopa considered the possibility of developing a business in skirts. Because Alscap had the connection with the supplier in Italy, it, on behalf of Lopa, purchased in October 1959 and imported into the United States in November, 200 dozen skirts labeled or marked as being made of fabric containing 95% reprocessed wool and 5% nylon. One of these skirts so labeled was obtained from one of Lopa's customers. A small piece was cut out of it (to which procedure respondents objected as before) and this fabric, after test, was found to contain 84.9% wool, 0.5% acetate and 14.6% residue (mostly nylon, some orlon, trace miscellaneous). (It should be noted here that this skirt appears to have been made of the same material as "PISA" to which reference is made on page 281.) The percentage differential which the actual wool content bore to the entire fiber content was 10.1%, while the percentage differential from the represented wool content was 10.6%.

The differentials in wool content so found are substantial. While the statute does not expressly set forth what amount of differential is to be regarded as a violation, and it provides a defense of allowable variation, which will be discussed below, it does provide that if the wool product is misbranded within the meaning of the Act or the Rules and Regulations thereunder, its introduction or sale, etc. in commerce is unlawful, is an unfair method of competition and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act. Section 4(a) defines a misbranded product as one which is "falsely or deceptively stamped, tagged, labeled or otherwise identified", or one on or to which a stamp, tag, label or other means of identification is not affixed and does not show "the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers: . . ." The references to 5% in Section 4(a)(2)(A) and in Section 5 would indicate that the Congress intended that whatever variation or deviation might be permitted under the proviso, which will be discussed later, was not to exceed 5%. Consequently, it would seem that, as a matter of law, since an affirmative obligation exists to disclose 5% or more of any foreign element, such a differential or variation in wool content, as a matter of law, must be regarded as being in violation.

The proviso, to which reference has been made from time to time, is:

* * * *Provided*, That deviation of the fiber contents of the wool products from percentages stated on the stamp, tag, label, or other means of identification,

shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

This recognizes that in the manufacturing process there could be a deviation of the actual fiber contents from the percentages stated. The amount of the deviation is not specified and I have indicated above the reason for my opinion that a deviation, to be considered as subject to this proviso, ought to be less than 5%. Respondents sought to show, by an application to take testimony in Italy, that the deviations appearing in this case were due to "unavoidable variations in manufacture," and they contended that in any event they exercised "due care to make accurate the statements" on the tags or labels. They thus sought to read into this proviso not one, but two, possible defenses—the first, an unavoidable variation in the manufacturing process, and the second, an exercise of due care.

A correct interpretation or construction of the proviso is that the possibility of deviation in the manufacturing process exists, that this possibility must be anticipated, that tests or analyses of the fabric, once manufactured, are to be made, and that the consequent and indicated care be exercised to make sure that the labels or brandings state, as accurately as possible, the true wool content. Right within the record of this case is illustrated the sort of manufacturing deviation which could occur. A certain cloth tested out at 85.1% wool content when the labeling called for 95%. The deficiency was 9.9% of the whole or 10.4% of the represented wool content. The same or similar cloth, also represented as having 95% wool content was made up into skirts. The cloth in one of these skirts tested out at 84.9% wool content. The deficiency was 10.1% of the whole or 10.6% of the represented wool content. This is the sort of manufacturing deviation contemplated by the statute—84.9% *vs.* 85.1% or 10.1% *vs.* 9.9% or 10.6% *vs.* 10.4%. In the absence of both a deviation such as is contemplated by the statute *and* a showing of due care in the labeling, the defense is not available. Where the facts of a case are such that it is apparent either one or the other does not exist, it is not necessary and would be a waste of the time and money of all concerned to take evidence in Italy of the premanufacturing, manufacturing, and postmanufacturing procedures in that foreign country.

As a matter of fact, in support of their claims of due care, respondents were unable to show that they subjected the materials to tests to determine whether the statements utilized by them were in fact correct. The statute does not permit blind reliance by persons subject

thereto on the conduct of others. Reliance on spotchecks or investigations made by others does not serve to absolve a vendor from erroneous or incorrectly stated representations adopted and consequently made by him. The statute recognizes, however, that persons may rely on manufacturers from whom they receive goods in which they trade (Section 9(a)). For the protection of such persons, it is provided that they may rely on "a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, that said wool product is not misbranded under the provisions of this Act" (emphasis mine). By the rule *expressio unius est exclusio alterius*, this is the *only* method by which a dealer in the United States can protect himself when relying on his supplier. Obviously, since respondents in this case did not purchase the goods involved from a manufacturer in the United States, they could not and did not obtain such a guarantee. It is also obvious that the requirement that the guarantee be signed by a person "residing in the United States" is imposed because only such a person would be subject to the requirements of and remedial action under the law.

Respondents contended also that they had paid Customs duties based on the represented amount of wool content, that such duties were greater than those which would have been payable on the actual wool content found in the tests, and that this should be taken into consideration in determining whether, in fact, there was a violation. (Although not relevant, the mere fact that a person pays a higher duty based on an exaggerated wool content is not indicative of his belief that the wool content is correctly described. One might willingly pay such higher duty in order to obtain the higher price which a higher wool content might command. To counter this sort of argument, respondent Joseph Scapa testified that whether the fabric contained 30% wool or 23% wool was not a factor in its selling price.) For the purpose of permitting the respondents to develop this defense fully, a Deputy Appraiser of Customs was asked to make the computations to provide a comparison of the duties payable under the actual wool content as distinguished from the represented wool content of the "SARA" and "MIRELLE" importations. For "SARA" the computation was \$64.43 as opposed to \$65.26, while for "MIRELLE" the computation was \$133.10 as opposed to \$135.95. This is practically *de minimis*.

Respondents argue that since the manufacturers in Italy and not they placed the tags and labels on the products, they should not be held

Initial Decision

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responsible for the representations contained thereon. While it may be assumed and the evidence suggests that the manufacturers affixed the tags and labels at the request of and on the direction of the respondents and thereby became respondents' agents in that respect, it is not material who affixes the tags or labels. Respondents, by utilizing the tags or labels so affixed, adopted the representations therein contained and became bound thereby and responsible therefor. To conclude otherwise would make the statute a nullity.

Respondents argue that "the intent of the Act" has not been violated, but in support of this refer inaccurately to the evidence.

They claim that they made no effort to falsify the wool content and had no intention to deceive or defraud. These are elements which do not go to the issue. The use in the statute of words like "falsely or deceptively" does not thereby require a showing of intent to deceive in order to make out a violation. The deception or fraud resulting from a mislabeling or misbranding is no different than that resulting in *Ultramares v. Touche*, 255 N.Y. 170, 174 N.E. 441, and other like cases. There is nothing novel about something being fraudulent in law without intent.

Finally, respondents urge that there has been no showing of any necessity for a cease and desist order in this case in view of their otherwise good record, the time which has elapsed without additional violation, and the relatively few instances of violation shown in the record. The statute with which we are here concerned is a remedial statute. It is not, as here applied, punitive and its purpose, as stated in the preamble, is protection of members of the public. The very fact that respondents, who appear to be reputable business folk, are here found in violation demonstrates the desirability and need for a public order to cease and desist. Publicizing of such an order, apart from the fact that the order will have a deterrent effect on respondents, has a real value because of the educational factor involved. The need is increased particularly in a case of this nature where an importer relies on labeling or branding by a foreign manufacturer who is not subject to the jurisdiction of the United States. It is the importer who introduces the goods for consumption in the United States. If importers are not made aware of their obligations under the Act, the door will be opened wide to great, if unwitting, deception of the public because of the continuing increases in importations from abroad.

It is my belief that the order hereinafter set forth is proper in this case and is necessary and appropriate to achieve effective enforcement of the law.

Respondents have submitted proposed findings of fact and conclusions of law. With minor variations, I would say that proposed findings numbered 1-14, inclusive, 17, 18, 21, 26, 28, 31, 32, 37-40, inclusive, 43, 44, could be found as supported by the evidence in the record. I do not adopt them for the reasons stated in *Capital Transit Co. v. United States*, 97 F. Supp. 614, 621. I reject requests to find numbered 15, 16, 19, 20, 22-25, inclusive, 27, 29, 30, 33-36, inclusive, and 41-42, for reasons stated during the course of the discussion above or because they do not correctly set forth the facts or are irrelevant. The proposed conclusions consequently must be rejected.

The following are my findings of fact.

FINDINGS OF FACT

1. Respondents Alscap, Inc., and Lopa of Italy, Ltd., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. These two corporations are closed corporations wholly owned by the individuals or their families (although Alscap, Inc., is separate from Lopa of Italy, Ltd., and Bernard Kaplan has no interest in Alscap, Inc.). Luba Scapa is Joseph Scapa's wife. Joseph Scapa owns 40% of Alscap, Inc., Luba Scapa 30% and Joseph Scapa's brother, Michael Scapa, the remaining 30%. Bernard Kaplan and Joseph Scapa each own 50% of the stock of Lopa of Italy, Ltd. Joseph Scapa is secretary and treasurer and a director of both Alscap, Inc., and Lopa of Italy, Ltd. Luba Scapa is president and a director of Alscap, Inc. Bernard Kaplan is president and a director of Lopa of Italy, Ltd. They formulate, direct and control the acts, policies and practices of their respective corporations which include the acts and practices hereinafter set forth. All respondents have their office and principal place of business at 97 Fifth Avenue, New York, N.Y.

2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, and more especially since January 1, 1959, respondents have imported from Italy and introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool products" are defined therein.

3. Certain of said wool products, namely woolen fabrics and ladies' skirts, were misbranded by respondents 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 constituent fibers contained therein. Among such

misbranded wool products were woolen fabrics and ladies' skirts imported from Italy by respondents, the fabrics being labeled or tagged by Alscap, Inc., "60% Rep. wool, 5% nylon, 35% wool", "95% Rep. wool, 5% nylon" and "30% Rep. wool, 70% rayon" and the ladies' skirts being labeled or tagged by Lopa of Italy, Ltd., as consisting of "95% reprocessed wool, 5% nylon," whereas, in truth and in fact said woolen fabrics and ladies' skirts in each instance contained substantially less woolen fiber than was represented.

4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged or labeled as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act and in the manner and form as prescribed by the Rules and Regulations promulgated thereunder.

5. The respondents in the course and conduct of their business as aforesaid were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the importation and sale of such wool products, including imported woolen fabrics and imported ladies' skirts.

And, from the foregoing, the following is my

CONCLUSION

The Federal Trade Commission has jurisdiction of this proceeding and of the respondents and this proceeding is in the interest of the public. The acts and practices of the respondents as set forth above were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, 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.

ORDER

It is ordered, That respondents Alscap, Inc., its officers, and Luba Scapa and Joseph Scapa, individually and as officers of said corporation, and Lopa of Italy, Ltd., its officers, and Bernard Kaplan and Joseph Scapa, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or indirectly or through any corporate or other device, in connection with the 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 woolen fabrics and ladies' skirts, or other "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 affix labels on such products showing each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

ORDER VACATING PRIOR ORDER, DECISION OF THE COMMISSION AND ORDER
TO FILE REPORT OF COMPLIANCE

The Commission having granted respondents' petition for review of the hearing examiner's initial decision by its order of December 26, 1961, and having set oral argument in this case for March 28, 1962; and

The respondents having failed to file their exceptions to the initial decision and brief in support thereof as provided by Section 4.21(a) of the Commission's Rules of Practice:

It is ordered, That the aforesaid order of the Commission granting the respondents' petition for review be, and it hereby is, vacated and set aside.

It is further ordered, That the oral argument scheduled for March 28, 1962, be, and it hereby is, cancelled.

It is further ordered, That the initial decision of the hearing examiner 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.

IN THE MATTER OF

A. C. WEBER & COMPANY, INC., ET AL.

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

Docket 8425. Complaint, June 7, 1961—Decision, Feb. 14, 1962

Consent order requiring Chicago distributors of "Pfaff" sewing machines to cease representing falsely, in advertisements and advertising mats distributed to dealers for their use, that excessive amounts were the usual retail prices of their products and that the sewing machines were guaranteed for life or unconditionally; and to cease placing in the hands of their dealers,