

IN THE MATTER OF
HARRISON MILLS, INC., GRANITE FABRICS CORP. ET AL.

Docket 5981. Complaint, April 30, 1952—Order, June 28, 1954

Charge: Neglecting to disclose flammability of brushed rayon fabrics.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Tenzer, Greenblatt, Fallon & Kaplan, of New York City, for respondents.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on to be heard by the Commission upon respondents' appeal from the initial decision of the hearing examiner and upon briefs and oral argument of counsel in support of and in opposition to said appeal; and

The Commission having duly considered said appeal and the record herein and being of the opinion, for the reasons stated in the accompanying opinion of the Commission, that the complaint should be dismissed without prejudice, such disposition of this case rendering it unnecessary to rule specifically on each of the points raised by respondents in their appeal:

It is ordered, That the complaint herein be, and it hereby is, dismissed without prejudice.

Commissioner Mead not participating for the reason that he did not hear oral argument and Commissioner Gwynne not participating for the reason that oral argument was heard prior to his appointment to the Commission.

OPINION OF THE COMMISSION

By MASON, Commissioner:

This matter is before us on respondents' appeal from the hearing examiner's initial decision.

The respondents are charged with having violated the Federal Trade Commission Act by failing to disclose that their rayon fabrics are composed of rayon and by failing to reveal the flammable characteristics of their brushed rayon fabrics. The hearing examiner found the facts to be substantially as alleged in the complaint, except with respect to two of the individual respondents as to whom the complaint is dismissed, and his order directs the remaining respondents to cease and desist from:

"1. Offering for sale or selling said fabrics without clearly disclosing thereon their rayon content.

"2. Offering for sale or selling fabrics made of brushed rayon which, because of the length of the fibers on the raised surface or because of any other reason, is highly inflammable, without affirmatively and clearly disclosing thereon that said fabrics are made of a highly inflammable material and garments made therefrom are dangerous and unsafe to be worn as articles of clothing."

The facts material to our consideration of this matter are these: The respondents are engaged in the manufacture and sale of fabrics, some of which are made of rayon but resemble wool in texture and appearance, and some of which are made of brushed rayon and are highly inflammable because of the length of the nap on the brushed up surface of the fabrics. Respondents formerly did not, by label or otherwise, inform purchasers of these fabrics that they were composed of rayon or that they were highly inflammable.

On December 11, 1951, the Commission promulgated Trade Practice Rules for the Rayon and Acetate Textile Industry. These rules declare that it is an unfair trade practice to sell or advertise products, including fabrics, composed of rayon without disclosure that they are rayon. The record shows that respondents, since February 11, 1952, more than two months prior to the issuance of the complaint, have been complying with the provisions of those rules with respect to the labeling of fabrics sold by them. There is no reason for us to believe that respondents will not continue to comply with these rules. Therefore, with respect to the allegations of the complaint relating to respondents' failure to disclose the rayon content of their rayon fabrics, it appears that everything that can be accomplished by a cease and desist order has already been accomplished by cooperative effort. The factual situation thus presented is similar in many respects to the one which was recently before us in the *Matter of Wildroot Company, Inc.*, Docket 5928, in which the complaint was dismissed without prejudice. We are of the opinion that similar action with respect to respondents' failure to disclose the rayon content of their rayon fabrics is appropriate in this case.

Subsequent to the hearings in this matter, an Act entitled "Flammable Fabrics Act" (67 Stat. 111) was passed. This Act becomes effective June 30, 1954, one year from the date of its passage. The Act declares, among other things, that the sale or offering for sale in commerce of any fabric which, under the standard of flammability contained in the Act, is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or

practice under the Federal Trade Commission Act. Wilful violation of the Act is punishable by a fine of not more than \$5,000, or by imprisonment of not more than a year, or both. If the brushed rayon fabrics involved in this proceeding are highly flammable within the meaning of this Act, respondents will be prohibited after June 30, 1954, from selling or offering for sale such fabrics in commerce regardless of whether they are labeled. The record in this proceeding does not warrant an order directing the respondents to cease and desist from selling or offering for sale fabrics which are highly flammable. It would support an order directing the respondents to cease and desist from selling or offering for sale in commerce highly flammable fabrics which are not properly labeled to show that they are highly flammable, but such an order obviously would not be appropriate in view of the absolute prohibition in the Flammable Fabrics Act against the sale or offering for sale of highly flammable fabrics.

In view of the above considerations, we are of the opinion that the public interest will be adequately served by dismissing the complaint, without prejudice. Such disposition of this case renders it unnecessary for us to rule more specifically on each of the points raised by respondents in their appeal from the hearing examiner's initial decision.

Syllabus

IN THE MATTER OF
HARLEY-DAVIDSON MOTOR CO.DECISION AND OPINION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3
OF THE CLAYTON ACT AND OF THE FEDERAL TRADE COMMISSION ACT*Docket 5698. Complaint, Sept. 14, 1949—Decision, June 29, 1954*

Where a corporation which was engaged in the manufacture and competitive interstate sale, advertisement, and distribution, under its trade name, of motorcycles, "servi-cars", sidecars, and package trucks, and a complete line of parts and accessories therefor, including oil, tools, shop supplies, and operators' clothing and equipment; was the largest manufacturer of motorcycles and related products in the United States; while selling some of its products directly to police departments, the Government, and some large fleet operators, sold the great majority thereof to some 800 independently owned franchise retail dealers which were considered by competing manufacturers to constitute the largest and best dealer organization in the field, and which, by virtue of said corporation's position as the dominant seller, and the functions performed by the motorcycle dealers in maintaining adequate service facilities, and engaging in various promotional activities designed to interest prospective purchasers, and to maintain their interest, constituted the largest existing potential market for motorcycles, equipment, parts, accessories, and motorcycle oil—

- (a) Entered into agreements with its dealers—who, with very rare exception, sold and repaired only its motorcycles and concentrated only on motorcycle riders of its product—whereby the dealer was obligated not to sell substitute component parts, accessories or oil for respondents' motorcycles; and, following the end of World War II, and while the period of scarcity still existed, resumed its policy of requiring and seeking, in effect, such exclusive dealing on the part of dealers;
- (b) Sanctioned or acquiesced in activities of its employees directed to that end, including periodic calls by its field representatives and the checking by them of dealers' stock for the purpose, among others, of ascertaining and reporting competitive products found, orders, in certain cases, to dispose of competitive merchandise, the exacting of promises so to do, and the holding up of dealer contracts pending the disposition of all such products and threats thereof, and, on one occasion, the preparation of a written pledge for the members of one of its dealer associations whereby the members undertook not to deal in parts and accessories not manufactured and sold by it, and the solicitation and securing of the executions thereof by the dealers at a meeting of the association and certain other action in said connection;

With the result that such dealer contracts and exclusive-dealing understandings and its efforts to enforce them resulted in loss of business by competitive sellers of parts, oils, and accessories; its dealers, insofar as appeared, complied strictly with their agreement to deal in its oil and parts exclusively; and while such dealers, despite a similar agreement as to accessories, did purchase the same from competitors, and were not forced out of the market by strict enforcement of the exclusive-dealing agreements, they