

Complaint

52 F. T. C.

IN THE MATTER OF

VIRCHAND PANACHAND & COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS*Docket 6396. Complaint, Aug. 23, 1955—Decision, Jan. 12, 1956*

Consent order requiring importers in New York City to cease violating the Flammable Fabrics Act by importing into the United States from Japan and selling in commerce silk scarves so highly inflammable as to be dangerous when worn.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Brockman Horne for the Commission.

Mr. Jesse Cohen, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Virchand Panachand & Company, Inc., a corporation, Peter Commercial Corporation, a corporation, U. M. Shah, V. V. Shah, N. R. Shah, C. Ferlazzo, N. B. Shah and Arnold Berke, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated thereunder, and it appearing 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 Virchand Panachand & Company, Inc., and Peter Commercial Corporation, are corporations organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents U. M. Shah, V. V. Shah, N. R. Shah, C. Ferlazzo, N. B. Shah and Arnold Berke are President, Vice President, Vice President, Secretary, Treasurer and General Manager, respectively, of above named corporate respondents. The individual respondents formulate, direct and control the policies, acts and practices of said named corporate respondents. The business address of all respondents is 15 Park Row, New York 38, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have imported into the United States articles of wearing apparel, as the term "articles of wearing apparel"

680

Decision

is defined in the Flammable Fabrics Act, which, under the provisions of Section 4 of said Act, as amended, were so highly flammable as to be dangerous when worn by individuals. Respondents have sold, offered for sale, introduced, delivered for introduction, transported and caused to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act, the said articles of wearing apparel, imported as aforesaid. Respondents have also transported and caused to be transported the said articles of wearing apparel, imported as aforesaid, for the purpose of sale and delivery after sale in commerce.

Among the articles of wearing apparel mentioned hereinabove were silk scarves manufactured in Japan.

PAR. 3. Respondents, in the course and conduct of their business, are engaged in direct and substantial competition in commerce with other corporations, firms and individuals in the sale and offering for sale of scarves which are not flammable "articles of wearing apparel" under the definition of the Flammable Fabrics Act.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Acts and of the rules and regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued August 23, 1955, charges the respondents Virchand Panachand & Company, Inc., and Peter Commercial Corporation, both of the foregoing being corporations existing and doing business under and by virtue of the laws of the State of New York, and U. M. Shah, V. V. Shah, N. R. Shah, C. Ferlazzo, N. B. Shah and Arnold Berke as individuals and officers of the two respondent corporations, with violation of the Federal Trade Commission Act and of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, in connection with the importation, sale, offering for sale and transporting in interstate commerce of articles of wearing apparel which articles were so highly flammable as to be dangerous when worn by individuals.

After the issuance of said complaint respondents Virchand Panachand & Co., Inc., Peter Commercial Corporation, U. M. Shah and Arnold Berke entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Acting Director of the Bureau of Litigation. The non-joinder in said agreement of the respondents V. V. Shah, N. R. Shah, C. Ferlazzo

and N. B. Shah will be hereinafter explained. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the signatory respondents admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions and oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which the signatory respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

By said agreement the signatory respondents further agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power or privilege to challenge or contest the validity of such order.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that the said order may be altered, modified or set aside in the manner provided by the statute for the orders of the Commission.

Accompanying the agreement is an affidavit executed by respondent, Arnold Berke, to the effect that the named respondents V. V. Shah, N. R. Shah, C. Ferlazzo and N. B. Shah are, respectively Vice-President, Vice-President, Secretary and Treasurer of the two corporate respondents but, contrary to the allegations of the complaint, do not formulate, direct and control, and have not formulated, directed nor controlled, the policies and activities of the corporate respondents, which affidavit is confirmed by a clause to like effect contained in the agreement signed by the parties as hereinabove named, and upon consideration of the agreement and affidavit in this behalf the order hereinafter passed will contain a clause of dismissal as to these named respondents.

Said agreement recites that the respondents Virchand Panachand & Co., Inc., and Peter Commercial Corporation are corporations existing and doing business under and by virtue of the Laws of the

State of New York; that the individual respondents U. M. Shah and Arnold Berke are, respectively, President and General Manager of the two named corporate respondents and as such formulate, direct and control the policies, acts and practices of the corporate respondents; that the office and principal place of business of all respondents signatory is located at No. 15 Park Row, New York, New York.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondents Virchand Panachand & Company, Inc., a corporation, and Peter Commercial Corporation, a corporation, and their officers, and respondents U. M. Shah, and Arnold Berke, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. Importing into the United States; or
2. Selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported in commerce, as "commerce" is defined in the Flammable Fabrics Act; or
3. Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce, any article of wearing apparel, which under the provisions of Section 4 of said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

Further ordered, That the complaint herein be dismissed as to the named respondents V. V. Shah, N. R. Shah, C. Ferlazzo, and N. B. Shah.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 12th day of January, 1956, become the decision of the Commission; and, accordingly:

Decision

52 F. T. C.

It is ordered, That the respondents Virchand Panachand & Company, Inc., a corporation, and Peter Commercial Corporation, a corporation, and U. M. Shah, and Arnold Berke, individually and as officers of said corporations, 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.

Decision

IN THE MATTER OF
M. RUBIN & SONS, INC., ET AL.

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

Docket 6318. Complaint, Mar. 23, 1955—Decision, Jan. 13, 1956

Consent order requiring sellers in New York City to cease representing through use of the color, pattern, and style of garments issued to members of the United States Armed Forces, and through markings, insignia, labels, and tags substantially the same as those used by the Armed Forces on similar garments, that the jackets and outer coats it sold were manufactured for the Armed Forces and in accordance with Armed Forces specifications; and Order requiring the same sellers to cease representing falsely through use of the word "Manufacturers" on letterheads and invoices and in advertising that it owned a factory where it made the products it sold, when actually all of its rainwear and 60% of its jackets were purchased from other firms and the remaining 40% of the latter were produced according to its specifications, by independent companies.

Mr. Terral A. Jordan, counsel supporting the complaint.

Chambers & Chambers, by *Mr. Gerald H. Chambers*, of New York, N. Y., counsel for respondents.

INITIAL DECISION OF HEARING EXAMINER JOHN LEWIS

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on March 23, 1955, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint charges respondents with two separate illegal practices in the operation of their business: (1) Selling and distributing jackets and outer coats which were made to simulate garments manufactured for the United States Armed Forces, and (2) representing themselves to be the manufacturers of the garments sold by them. Respondents appeared by counsel and filed their joint answer in which they admitted that in that portion of their business in which they acted as distributors and jobbers for merchandise manufactured by others, they had sold garments which in some instances contained labels of the kind and character alleged in the complaint, but that such practice had been discontinued in 1954, and otherwise denied any violation of the Act.