

PREMIER KNITTING CO., INC., ET AL.

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

Docket 7366. Complaint, Jan. 22, 1959—Decision, Oct. 20, 1960

Order requiring New York City distributors to cease representing falsely on attached tags or labels that their orlon sweaters would not pill.

As to respondents Universal Dye Works, Inc., and Joseph Schmitz, Jr., the proceeding was disposed of by a consent order on July 4, 1959, 56 F.T.C. 15.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Garland S. Ferguson for the Commission.

Rothstein & Korzenik, by *Mr. Harold Korzenik*, of New York, N.Y., for respondents.

INITIAL DECISION AS TO RESPONDENTS PREMIER KNITTING CO., INC.,
ARNOLD A. SALTZMAN, SANFORD FORSTER AND IRVING SALTZMAN

Universal Dye Works, Incorporated and Joseph Schmitz, Jr. (erroneously named in the complaint as Joseph B. Schmitz), individually and as an officer of said corporation, and counsel supporting the complaint, entered into an agreement containing a consent order which became the basis for an initial decision which was issued by the Hearing Examiner May 25, 1959, and adopted as the decision of the Commission June 9, 1959. In this decision a cease-and-desist order was issued as to Universal Dye Works, Incorporated and its officers, and Joseph Schmitz, Jr., individually and as an officer of said corporation. The complaint was dismissed as to Fred C. Oshell, Catherine C. Conver and Lily M. Schmitz individually and as officers of said corporation. This disposed of all the issues raised in the complaint as to this group of respondents.

The complaint charges that the remaining respondents, Premier Knitting Co., Inc. and Arnold A. Saltzman, Sanford Forster and Irving Saltzman, individually and as officers of said corporation, violated the Federal Trade Commission Act by falsely and deceptively representing that certain orlon sweaters which they sold and distributed in commerce would not pill. These charges were denied. Thereafter hearings were held and proposed findings of fact and conclusions were submitted by counsel. Upon the basis of the entire record as to these respondents the following findings of fact are made, conclusions drawn and order issued.

1. Respondent Premier Knitting Co., Inc., hereinafter referred to as Premier, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1410 Broadway, New York, New York.

2. Respondent Arnold A. Saltzman is, and at all times mentioned in the complaint was president of Premier, and he alone has been and is responsible for the formulation, direction and control of the acts and practices of said corporation; respondents Irving Saltzman and Sanford Forster were and are officers of Premier, but did not and do not participate in the direction or control of the acts and practices of said corporation.

3. Premier is now and since 1916 has been engaged in the business of selling and distributing ladies' sweaters to retail stores throughout the United States for resale to the general public. In

927

Decision

the course and conduct of its business, Premier ships its sweaters, when sold, to purchasers thereof located in states other than the state or states in which said shipments originate. The volume of its trade among the several states has been substantial.

4. During the period "from the end of 1957 to the summer of 1958" (the complaint was issued January 22, 1959), certain of Premier's orlon sweaters carried tags which contained the following:

On the front of the tag:

K O R L A N E —
With UT R E X*
FORMULA
Newest Miracle Orlon
Exclusive With

P R E M I E R

THIS SWEATER WILL NOT PILL!

Wash it as often as you like, sweaters of KORLANE REX are permanently pill resistant with these added features.

- Will retain its shape indefinitely.
- It washes cleaner, dries faster.

*U.S. Pat. Pend.

On the back of the tag:

FACTS ABOUT KORLANE REX*

You can actually feel the difference in this sweater. It has the spring and bounce of a fine animal fibre. After months of wear it will remain soft and smooth. Shown here are close-up photos of the surfaces of two sweaters taken from the same stock.

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NO PILLING	MUCH PILLING
This is Korlane Rex*	Conventional Orlon.

Beginning in the summer of 1958, different tags were used which contained the following:

On the front of the tag:

K O R L A N E —
With UT R E X*
FORMULA
Newest Miracle Orlon
Exclusive With

P R E M I E R

- You can "feel" the difference.
- It has "new" lofty hand of finest animal fibre.
- The "spring" and "bounce" of Shetland.

*U.S. Pat. Pend.

On the back of the tag:

FACTS ABOUT KORLANE REX*

- WILL RETAIN ITS SHAPE INDEFINITELY
- MOTH PROOF AND MILDEW PROOF
- COLOR-SET IN TRUE, GLOWING COLORS
- MANUFACTURER'S GUARANTEE WITH EACH SWEATER

Shown here are close-up photos of the surfaces of two sweaters taken from the same stock.



Washing Instructions
 Sweaters of Korlane Rex are machine
 or hand washable.

5. The statements "This sweater will not pill" and "No pilling" constitute a representation not only that the sweaters so tagged will not pill as the result of ordinary use and wear, but connote also that no pilling will result no matter how rough the usage or how hard the wear. The statements are unqualified.

6. One of the Commission's witnesses, the President of Universal Dye Works, Inc., stated that he had worn one of Premier's sweaters for 1,000 hours, that it had been laundered mechanically as well as by hand, and that there was no evidence of pilling—that it was completely free of pilling after such use.

7. Two Premier sweaters which had been received in evidence as Commission's Exhibits 3 and 6 were submitted to A C H Fiber Service, Inc., of Boston, Massachusetts, with a request that "tests be made on these exhibits to determine if they will or will not pill". The A C H Test Report, dated October 9, 1959, was stipulated into the record, as was an addendum letter from A C H to the Commission's Bureau of Litigation, dated November 3, 1959. Four test samples, identified as No. A-1 to No. A-4, approximately four inches in diameter, were taken from Commission's Exhibit 3, and two similar samples, No. A-5 and No. A-6, from Commission's Exhibit 6. These were subjected to the testing method referred to in ASTM Standard D 1375-55 T, Method A, described in the test report as follows:

This is the Inflated Diaphragm method, and makes use of the Stoll-Quartermaster Tester illustrated in this Standard. Commercial cellulose sponges were used as the abradant, after preparation by thorough washing in tap water, rinsing in distilled water, and drying so that any finishes on the sponges

927

Decision

would be removed. The purpose of this method, as quoted from the above Standard, is "for the determination of the pilling propensity and retention of appearance of woven and knitted fabrics composed of natural or synthetic fibers, or blends".

8. The test report shows the following results under use of Method 1:

Test piece No. A1 (Sample 1)—500 cycles:

<i>Visual Observation</i>	<i>Observation at 10X</i>
3 Major Pills	3 Major Pills
1 Minor Pill	2 Minor Pills
Several incipient pills	2 Incipient Pills

Test piece No. A2 (Sample 1)—1000 cycles:

<i>Visual Observation</i>	<i>Observation at 10X</i>
4 Major Pills	5 Major Pills
2 Minor Pills	2 Incipient Pills
Several incipient pills	

Test piece No. A3 (Sample 1)—3000 cycles:

<i>Visual Observation</i>	<i>Observation at 10X</i>
1 Major Pill	5 Major Pills
2 Minor Pills	1 Moderate Pill
Few incipient pills	2 Minor Pills
	3 Incipient Pills

Test piece No. A4 (Sample 1)—3000 cycles, new sponge:

<i>Visual Observation</i>	<i>Observation at 10X</i>
5 Major Pills	9 Major Pills
4 Minor Pills	3 Moderate Pills
Several incipient pills	3 Incipient Pills

Test piece No. A5 (Sample 2)—1250 cycles:

<i>Visual Observation</i>	<i>Observation at 10X</i>
1 Major Pill	1 Major Pill
1 Moderate Pill	2 Incipient Pills
Several minor or incipient pills	

Test piece No. A6 (Sample 2)—500 cycles, new sponge:

<i>Visual Observation</i>	<i>Observation at 10X</i>
1 Very Major Pill	1 Major Pill
Few incipient pills	2 Incipient Pills

9. As stated in the test report, "A test was additionally performed, modelled after Method B of the same ASTM standard. In this method, the testing apparatus imposes a reciprocating random motion during abrasion, rather than the limited directional movements imposed by the Stoll apparatus. For this test, a Schieffer Abrasion tester was set up with a disc of fabric from Sample 2 attached in a 4½" ring as the upper abradant, under a one-pound load. A disc of the same fabric was mounted in a P12 lightweight clamp to serve as the surface to be abraded. The area of the lower disc exposed to random motion abrasion was approximately ¾" in diameter."

Decision

57 F.T.C.

The A C H letter of November 3, 1959 further describes the procedure as follows:

For method 2, a 5" diameter disc was cut by hand from the black sweater to serve as the upper (abradant) surface, and a 2½" diameter disc was die cut from the same sweater to serve as the test surface. Thus, in method 2, the fabric was tested by abrasion against itself.

Only one sample, taken from Commission's Exhibit 6 and identified as B1, was tested by this method, with the following result:

Test piece No. B1—500 cycles:

<i>Visual Observation</i>	<i>Observation at 10X</i>
2 Major Pills	1 Major Pill
Several incipient pills	1 Moderate Pill
	1 Minor Pill

10. The conclusions reached by Dr. Samuel J. Golub, Associate Director of A C H Fiber Service, Inc., are set forth in the report as follows:

1. As shown in the results already cited, the fabric produced pills by both methods tested—i.e. when abraded in a Stoll-Quartermaster machine, using a sponge as the abradant, and when abraded against itself in the Schieffer tester.

2. The propensity for pilling shown especially by Method 1 (Stoll tester) is consistent, in our opinion, with fabrics which pill.

11. The conclusions reached by the testing laboratory are accepted. Accordingly, it is found that the representations made by Premier as to pilling of orlon sweaters sold and distributed by it were and are false and misleading. Its officers and Arnold A. Saltzman, as an officer and individually, are responsible for such representations. The aforesaid misrepresentations, and the acts and practices of said respondents as herein set forth 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.

12. No representations as to the pilling of any other orlon or other type garment or product have been shown to have been made by said respondents, and there is no evidence upon which any conclusion can be reached as to the pilling propensity of any products manufactured, sold or distributed by said respondents except the orlon sweaters; therefore the order will be limited to orlon sweaters and similar products, "similar products" being used as referring to other orlon products made of yarns or fabrics similar to those contained in the orlon sweaters hereinabove found to have been misrepresented. Accordingly,

It is ordered, That respondents Premier Knitting Co., Inc., a corporation, and its officers, and Arnold A. Saltzman individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's orlon sweaters or any other similar orlon product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication, that their orlon sweaters or any other similar orlon product will not pill.

It is further ordered, That the complaint herein, insofar as it relates to respondents Sanford Forster and Irving Saltzman individually, be, and it hereby is, dismissed.

OPINION OF THE COMMISSION

By *SECRET, Commissioner:*

The complaint in this case alleges that respondents violated Section 5 of the Federal Trade Commission Act by representing that certain sweaters sold by Premier Knitting Co., Inc., will not pill and that such representation is false because these sweaters will pill. Pilling means a curling up of the ends of the staple used in spinning the yarn.

This proceeding was disposed of for two of the respondents, Universal Dye Works, Incorporated, and Joseph Schmitz, Jr., (erroneously named in the complaint as Joseph B. Schmitz) by an initial decision containing a consent order to cease and desist which became the decision of the Commission on July 4, 1959. The hearing examiner filed his initial decision as to the remaining respondents on February 29, 1960. He found Premier Knitting Co., Inc., and Arnold A. Saltzman had violated the Federal Trade Commission Act as charged and included in his decision an order prohibiting them from engaging in these practices. He ordered the complaint dismissed as to Sanford Forster and Irving Saltzman, individually.

Respondents Premier Knitting Co., Inc., and Arnold A. Saltzman have appealed from the initial decision of February 29, 1960.* The questions raised in the appeal involve, among other things, the weight to be given to certain evidence and the scope of the order.

Respondents first assert that a reasonable construction of their statements is that their sweaters will not pill in the course of usage and wear. This they say is the standard which has been used in prior cases, and they insist that they have met such standard. The

*Hereafter in this opinion any reference to respondents, unless otherwise indicated, will mean the appealing respondents.

cases cited are *Ladd Knitting Mills, Inc., et al.*, Docket 7216 (1958), and *Morrison Knitwear Co., Inc., et al.*, Docket 7680 (1960). These cases both involve a consent order to cease and desist. The complaints therein, as to representations that garments were non-pilling, alleged that the garments would pill "after wear and usage." No similar terminology appears in the instant complain. Respondents argue that this phrase in the other complaints creates a standard less exacting than that applied in this proceeding. They say that there is probably no textile fiber which cannot be made to pill by abuse and that to apply a standard other than conditions of "wear and usage" would be unrealistic.

The examiner found that respondents' statements "this sweater will not pill" and "no pilling" constitute a representation not only that the sweaters so tagged will not pill as a result of ordinary use and wear, but connote also that no pilling will result no matter how rough the usage or how hard the wear. The proof in this case extends only to the latter connotation. Under the order, respondents are prohibited from making unqualified statements as to pilling. Representations as to other non-pilling properties, such as under conditions of ordinary wear and usage, are not prohibited. Thus, respondents' objections on this point are entirely unwarranted.

Respondents next take exception to the weight given by the hearing examiner to the laboratory tests made of their sweaters for pilling. They assert that the test evidence should be disregarded because allegedly (a) it was made by an undisclosed person whose qualifications were undisclosed, (b) there is no showing that the test is standard or generally acceptable in the apparel industries, (c) it proves no facts related to reasonable usage and wear, and (d) it is at variance with the bill of particulars.

The laboratory test document here disputed was admitted in evidence by order of the examiner pursuant to a formal stipulation of the parties, dated December 18, 1959. There is no testimony concerning these tests or the laboratory test document. Respondents had full opportunity to present their defense and failed to make any showing against the qualifications of the person or persons making the tests or against the validity of the test evidence. They cannot now claim that this evidence is lacking in probative weight.

The test document discloses that it is a test report on "Pilling Tests of Orlon Sweaters" conducted by A C H Fiber Service, Inc., Boston, Massachusetts, for the Federal Trade Commission. It is dated October 9, 1959. The object of the test as stated therein was to determine as to the sweaters involved "if they will or will not pill." The two methods used in the testing are described in the

report. One test, referred to as the principal test method used, was identified as "ASTM Standard D 1375-55T, Method A." The other test was identified as a test "modelled after Method B of the same ASTM Standard." Detailed results of the two tests are set forth. The conclusions state, among other things, that "the fabric produced pills by both methods tested." We believe that the test report should be accepted for what it purports to be, namely, a report of tests run on respondents' sweaters in accordance with "ASTM Standard" procedures which show that the garments will pill. There is no clear indication on the test document that the tests were related to "reasonable usage and wear." This, however, will not prejudice the respondents as we indicated in our discussion above.

Respondents' contention with reference to the bill of particulars is rejected. We note that the respondents' motion for a bill of particulars was granted in part by the examiner with the express reservation that counsel supporting the complaint "will not be ineluctably bound to use all the material submitted to respondents, nor inhibited from offering other relevant evidence not herein required to be submitted."

Another point raised by respondents is their claim of a voluntary discontinuance of the practice prior to the issuance of the complaint or the investigation which led to the complaint. It appears, however, that at least one of the hang tags containing the objectionable representation was in use during the time of the hearing and subsequent to the complaint. Thus, there is no showing that respondents have actually discontinued the practice alleged, and this argument is rejected.

Finally, respondents assert that, since the complaint and proof dealt with orlon sweaters treated with Universal's "UT-Formula," the prohibition in the order should be likewise limited. The order against Universal Dye and its officers, the other respondents in this case, is phrased in terms of the use of the "UT-Formula." It need only be pointed out that the "UT-Formula" is the preparation distributed by Universal Dye and that sweaters are the products distributed by Premier Knitting Co., Inc. The respective orders are worded so as to most appropriately ban the misrepresentation in terms of the businesses involved. In the case of the respondents, Premier Knitting Co., Inc., and its officers, this means the business of selling orlon products. The order would be unduly limited if it were confined only to the orlon products sold by these respondents treated with "UT-Formula." This argument is also rejected.

Respondents' appeal is denied and the initial decision is adopted

Decision

57 F.T.C.

as the decision of the Commission. It is directed that an appropriate order be entered.

Commissioner Tait did not participate in the decision of this matter.

FINAL ORDER

This matter having been heard upon the appeal of respondents, Premier Knitting Co., Inc., and Arnold A. Saltzman, from the hearing examiner's initial decision, and upon briefs and oral arguments in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision as the decision of the Commission:

It is ordered, That respondents, Premier Knitting Co., Inc., and Arnold A. Saltzman, 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 contained in the initial decision.

Commissioner Tait not participating.