

or said corporation, 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
WARE KNITTERS, INCORPORATED, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8079. Complaint, Aug. 11, 1960—Decision, Aug. 25, 1961

Consent order requiring a firm in Ware, Mass., to cease violating the Flammable Fabrics Act by selling fabric so highly flammable as to be dangerous when worn, and by giving a guaranty to customers that tests made under legal procedures showed the fabric did not endanger wearers, when such tests were not made on all the fabrics covered by the guaranty.

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 Ware Knitters, Incorporated, and Gilbertville Mills, Incorporated, both corporations, and James F. Nields, B. Joseph Kmon, and Marion B. Damon, 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 under the Flammable Fabrics 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 Ware Knitters, Incorporated, is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts. Its address is East Main Street, Ware, Massachusetts.

Respondent Gilbertville Mills, Incorporated, is a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts. Its address is Gilbertville, Massachusetts.

Individual respondents James F. Nields, B. Joseph Kmon, and Marion B. Damon are officers of said corporate respondents. They formulate, direct, and control their policies, acts, and practices. Said individual respondents' business address is the same as that of respondent Ware Knitters, Incorporated.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce, have introduced, delivered for introduction, transported, and caused to be transported, in commerce, and have transported and caused to be transported, after sale in commerce, as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the fabric, mentioned in Paragraph Two hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said fabric is not, in the form delivered by the respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabric covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of the said fabric, respondents have not made such reasonable and representative tests.

PAR. 4. 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 fabric which is not flammable under the definition of the Flammable Fabrics Act.

PAR. 5. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and 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.

Mr. Brockman Horne supporting the complaint.

Mr. Sidney S. Korzenik, Rothstein & Korzenik, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above named respondents on August 11, 1960. The complaint charged among other things the sale, introduction into commerce and transportation of fabric so highly flammable as to be dangerous when worn by individuals, and the issuance of a guarantee that such fabric was not so highly flammable as to be dangerous when worn by individuals. Said acts and practices were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning and in violation of the Federal Trade Commission Act and also to be in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder.

Thereafter and on June 13, 1961, counsel supporting the complaint presented to the undersigned an agreement dated May 26, 1961, executed by all respondents except Gilbertville Mills Inc., by counsel for respondents and by counsel supporting the complaint providing for the entry without further notice of a cease and desist order. The agreement was duly approved by the Director and the Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondents of all jurisdictional facts alleged in the complaint.

B. Provisions that:

- (1) The complaint may be used in construing the terms of the order;
- (2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Attached to and made part of said agreement is an affidavit of respondent B. Joseph Kmon verified May 26, 1961, alleging that respondent Gilbertville Mills, Incorporated had never offered for sale, sold, manufactured, shipped, screenprinted or otherwise processed or handled any of the fabric involved in the proceeding. Gilbertville Mills according to the affidavit had merely acted as accommodation endorser in billing and invoicing the goods and had no connection other than this financial connection with the transactions referred to in the complaint.

On the basis of said affidavit the parties agreed that the complaint be dismissed as to respondent Gilbertville Mills, Incorporated and as to the individual respondents in their capacities as officers of said corporate respondent. Said individuals are retained as respondents in their capacity as officers of Ware Knitters, Inc., and as individuals.

Having considered said agreement including the proposed order and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding, and finally disposes of the proceeding in all respects, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Ware Knitters, Incorporated, is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at East Main Street, Ware, Massachusetts.

2. Individual respondents James F. Nields, B. Joseph Kmon, and Marion B. Damon are officers of said corporate respondent. They formulate, direct, and control the policies, acts and practices of said corporate respondent. Said individual respondents' business address is the same as that of respondent Ware Knitters, Incorporated.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Ware Knitters, Incorporated, a corporation, and its officers, and respondents James F. Nields, B. Joseph Kmon and Marion B. Damon, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) 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

(b) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce, any fabric which, under the provisions of Sec. 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals;

2. Furnishing to any person a guaranty with respect to any fabrics which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Sec. 4 of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, show and will show that the fabrics covered by the guaranty, are not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a

Complaint

59 F.T.C.

guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the fabric was manufactured or from whom it was received.

It is further ordered, That the complaint be, and the same hereby is, dismissed with respect to respondents Gilbertville Mills, Incorporated, and James F. Nields, B. Joseph Kmon, and Marion B. Damon in their capacities as officers of respondent Gilbertville Mills, Incorporated.

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 25th day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Ware Knitters, Incorporated, a corporation, and its officers, and James F. Nields, B. Joseph Kmon and Marion B. Damon, individually and as officers of said corporation 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

BYRON CLOTHING MFG. COMPANY, INC., ET AL.