

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.

By the Commission, Commissioner Anderson not participating.

IN THE MATTER OF

ELYSÉE FABRICS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION, THE TEXTILE FIBER PRODUCTS IDENTIFI-
CATION, AND THE WOOL PRODUCTS LABELING ACTS

Docket C-236. Complaint, Sept. 18, 1962—Decision, Sept. 18, 1962

Consent order requiring importers in Jamaica, N.Y., to cease violating the Textile Fiber Products Identification Act by labeling, invoicing, and advertising textile fiber products falsely as to the name or amount of constituent fibers, and by use of such misleading terms as "linen weave" and "silky"; failing to disclose on labels on textiles the true generic name of the fibers present, the percentage thereof, and the order of predominance by weight; failing to set forth in catalogs the true generic names of fibers in advertised fabrics, and using therein the name "leopard" or other fur bearing animal for textiles which were not fur products; and to cease violating the Wool Products Labeling Act by failing to disclose the true generic name of fibers present in wool fabrics.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Elysée Fabrics, Inc., a corporation, and Gunther F. Ziegler, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, 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 Elysée Fabrics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Gunther F. Ziegler is vice-president of the corporate respondent and assists in formulating, directing and controlling the acts, practices and policies of the corporate respondent. Respondents are engaged in the importation of fabrics into the United States and in the retail sale of fabrics by mail and through its retail stores. The office and principal place of business of all respondents is located at 152-20 Rockaway Boulevard, Jamaica, N.Y.

PAR 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation and causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, and have caused to be transported, textile fiber products, which have been advertised and offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported, after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce", and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and the Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively labeled, in that they were labeled as "50% cotton, 18% artificial fiber, 2% nylon, 30% rayon" whereas, in truth and in fact, such textile fiber products contained substantially different amounts of fibers from those represented on the label.

Also among such misbranded textile fiber products, but not limited

Complaint

61 F.T.C.

thereto, were textile fiber products which were falsely and deceptively advertised by means of "catalogs", sold and distributed by respondents throughout the United States, in that certain of said advertisements contained terms which represented, either directly or by implication, certain fibers as present in said products when such was not the case.

Among such terms, but not limited thereto, were the terms "linen weave" and "silky".

PAR. 4. Certain of said textile fiber products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Acts.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

1. To disclose the true generic name of the fibers present.
2. To disclose the percentage of such fibers.
3. To designate each fiber in the products in order of predominance by weight.

PAR. 5. Certain of said textile fiber products were further misbranded by respondents in that fibers present in such textile fiber products in the amount of five per centum or less of the total fiber weight were designated by their generic names, in violation of Section 4(b) of the Textile Fiber Products Identification Act and Rule 3 of the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Fiber trademarks were placed on labels without the generic name of the fibers appearing on such labels, in violation of Rule 17(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used on labels without a full and complete fiber content disclosure appearing on such labels, in violation of Rule 17(b) of the aforesaid Rules and Regulations.

C. Samples, swatches and specimens of textile fiber products subject to the aforesaid Act which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 7. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist directly or indirectly in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

Among such textile fiber products, but not limited thereto, were fabrics which were falsely and deceptively advertised by means of "catalogs" sold and distributed by respondents throughout the United States in that the true generic names of the fibers in such fabrics were not set forth.

PAR. 8. In advertisements of textile fiber products by the means alleged in paragraph 7, certain of said textile fiber products were falsely and deceptively advertised in that fibers present in such textile fiber products in the amount of five per centum or less of the total fiber weight were designated by their generic name, in violation of Section 4(c) of the Textile Fiber Products Identification Act and Rule 3 of the Rules and Regulations promulgated thereunder.

PAR. 9. In advertisements of textile fiber products by the means alleged in paragraph 7, certain of said textile fiber products were falsely and deceptively advertised in that the name of a fur-bearing animal, including among others leopard, but not limited thereto, was used in the advertisement of such products when said products or parts thereof in connection with which the name of the fur-bearing animal was used, were not furs or fur products within the meaning of the Fur Products Labeling Act and did not contain the hair or fiber of such fur-bearing animal, in violation of Section 4(g) of the Textile Fiber Products Identification Act and Rule 9 of the Rules and Regulations promulgated thereunder.

PAR. 10. In advertisements of textile fiber products by the means alleged in paragraph 7, certain of said textile fiber products were falsely and deceptively advertised in violation of the Textile Fiber Products Identification Act in that they were not advertised in accordance with the Rules and Regulations promulgated thereunder, in the following respects:

A. The generic name of a fiber was used in advertising textile fiber products, in such a manner as to be false, deceptive, and misleading as to fiber content and to indicate, directly or indirectly, that such textile fiber products were composed wholly or in part of such fiber when

Complaint

61 F.T.C.

such was not the case, in violation of Rule 41(d) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products advertised as "linen weave" thus implying that such products were composed wholly or in part of linen when in fact the products contained no linen.

B. Nonrequired information and representations used in advertising textile fiber products were false, deceptive and misleading as to the fiber content of the textile fiber products and were set forth and used so as to interfere with, minimize and detract from the required information, in violation of Rule 42(b) of the aforesaid Rules and Regulations.

Among such products, but not limited thereto, were textile fiber products advertised as linen-weave and linen-like weave thus representing, directly or by implication that the said products contained linen when such was not the case.

PAR. 11. The acts and practices of respondents, as set forth above, were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

PAR. 12. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale in commerce, wool products, as the terms "commerce" and "wool product" are defined in said Act.

PAR. 13. Certain of said wool products were misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified with the information required under Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool fabrics which failed to disclose the true generic name of the fibers present.

PAR. 14. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that specimens or samples of wool products which were used to promote or effect sales of such wool products in commerce, were not labeled or marked to show the information required under

Section 4(a) (2) of the Wool Products Labeling Act of 1939 and the Rules and Regulations thereunder, in violation of Rule 22 of the afore-said Rules and Regulations.

PAR. 15. The acts and practices of the respondents as set forth in paragraphs 12, 13 and 14 above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations 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.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, the Textile Fiber Products Identification Act and the Wool Products Labeling Act of 1939, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

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, Elysée Fabrics, Inc., 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 152-20 Rockaway Boulevard, in the city of Jamaica, State of New York.

Respondent, Gunther F. Ziegler, is an officer of said corporation and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Elysée Fabrics, Inc., a corporation, and its officers, and Gunther F. Ziegler, individually and as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products by representing either directly or by implication, through the use of such terms as "linen weave", and "silky", or any other terms, that such products contain any fibers which are not present therein.

3. Failing to affix labels to such textile fiber products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

4. Setting forth the generic name or fiber trademark of a fiber present in any of the aforesaid textile fiber products when the amount of such fiber is five per centum or less of the total fiber weight of such product.

5. Using a fiber trademark as a part of the required information on labels affixed to such textile fiber products without the required generic name of the fiber appearing on the said labels in immediate conjunction therewith and in type or lettering of equal size and conspicuousness.

6. Using a generic name or fiber trademark on any label, whether required or nonrequired, without making a full and complete fiber content disclosure in accordance with the Act and the Rules and Regulations promulgated thereunder, the first time such generic name or fiber trademark appears on the label.

7. Failing to affix labels showing the respective fiber content and other required information to samples, swatches and specimens of textile fiber products subject to the aforesaid Act which are used to promote or effect sales of such textile fiber products.

B. Falsely or deceptively advertising textile fiber products by:

1. Making any representation, by disclosure or by implication, as to the fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using any names, words, depictions, descriptive matter, or other symbols which connote or signify a fur-bearing animal, unless such products or parts thereof in connection with which the names, words, depictions, descriptive matter or other symbols are used, are furs or fur products within the meaning of the Fur Products Labeling Act, provided, however, where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend", may be used.

3. Setting forth the generic name of a fiber present in any of the aforesaid textile fiber products when the amount of such fiber is five per centum or less of the total fiber weight of such product.

4. Using a generic name of a fiber in advertising textile fiber products in such a manner as to be false, deceptive or misleading as to the fiber content or to indicate, directly or indirectly, that such textile fiber products are composed wholly or in part of such fiber when such is not the case.

5. Using nonrequired information and representations in such advertising in such a manner as to be false, deceptive or misleading as to the fiber content of the textile fiber products or so as to interfere with, minimize or detract from required information.

It is further ordered, That respondents, Elysée Fabrics, Inc., a corporation, and its officers, and Gunther F. Ziegler, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products as the terms "commerce", and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Failing to securely affix to or place on each product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

2. Failing to affix labels to samples, swatches or specimens of wool products used to promote or effect sales of wool products, showing each element of information required to be disclosed by Section 4(a) (2) of the Wool Products Labeling Act of 1939.

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

IN THE MATTER OF

HOME FREEZER FOODS, INC., ET AL.

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