

IN THE MATTER OF

MOE OSHER TRADING AS RELIABLE
HANDKERCHIEF CO.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket 8333. Complaint, Mar. 16, 1961—Decision, Oct. 3, 1962

Order requiring a New York City distributor to cease violating the Textile Fiber Products Identification Act by selling handkerchiefs which did not have affixed thereto labels showing the required information, and by furnishing false guaranties that such products were not misbranded.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission,

having reason to belief that Moe Osher, an individual, trading as Reliable Handkerchief Co., hereinafter referred to as respondent, has violated the provisions of such Acts and the Rules and Regulations under the Textile Fiber Products Identification 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 Moe Osher is an individual trading as Reliable Handkerchief Co. and has his principal place of business at 47 Division Street, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is now engaged in the introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and has sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which had been advertised or offered for sale in commerce; and has 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 which were made of other textile products so shipped in commerce, as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products, to wit: handkerchiefs were misbranded by respondent in that they were not stamped, tagged, or labeled with the information required under 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 Act.

PAR. 4. The respondent has furnished false guarantees that his textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 5. The respondent, in the course and conduct of his business, as aforesaid, was and is in substantial competition with other corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products, including handkerchiefs, in commerce.

PAR. 6. The acts and practices of respondent, as set forth herein, were in violation of the Textile Fiber Products Identification Act 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.

Mr. De Witt T. Puckett and *Mr. Bernard Turiel* for the Commission.

Respondent not represented by counsel.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The complaint in this matter charges the respondent with violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act, in connection with the sale of handkerchiefs. No answer to the complaint was filed by the respondent. At a hearing held on November 13, 1961, evidence both in support of and in opposition to the complaint was received. Thereafter proposed findings and conclusions were submitted by Commission counsel (respondent having elected not to file such proposals) and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. The respondent Moe Osher is an individual trading as Reliable Handkerchief Co. with his principal place of business at 47 Division Street, New York, N.Y. Respondent is engaged in the sale and distribution of textile fiber products, including handkerchiefs, his sales being made principally to retail outlets. Some of respondent's handkerchiefs are purchased by him from the manufacturers thereof, and the remainder are manufactured for respondent under his own specifications on a contractual basis. His annual volume of business is substantial.

3. Respondent's products, when sold, are shipped by him from his place of business in the State of New York to purchasers located in various other states of the United States.

4. In the course and conduct of his business, respondent is in substantial competition with other individuals and with corporations and firms engaged in the interstate sale and distribution of handkerchiefs.

5. Certain of respondent's handkerchiefs transported in commerce were misbranded in that they were not stamped, tagged or labeled with the information required under Section 4(b) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under such Act.

6. There appears to be no evidence supporting the charge in paragraph 4 of the complaint that respondent has furnished false guarantees regarding his products, in violation of Section 10 of the Textile Fiber Products Identification Act. While the record (Comm. Ex. 11)

shows that a continuing guaranty was filed by respondent with the Federal Trade Commission, there is no evidence that respondent in invoices or otherwise has made any references to such guaranty in connection with the sale of his products. This charge in the complaint is therefore being dismissed.

CONCLUSION

The acts and practices of respondent as described above were in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That respondent Moe Osher, an individual, trading as Reliable Handkerchief Co., and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States of textile fiber products; and in connection with selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and in connection with selling, offering for sale, advertising, delivering, transporting, and causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which have been made of other textile fiber products shipped in commerce; as the term "commerce" is defined in the Textile Fiber Products Identification Act, of handkerchiefs or other "textile fiber products", as such products are defined in and subject to the Textile Fiber Products Identification Act, do forthwith cease and desist from:

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

It is further ordered, That the complaint be dismissed as to the charge that the respondent has furnished false guarantees in violation of Section 10 of the Textile Fiber Products Identification Act.

FINAL ORDER

The Commission on July 18, 1962, having issued its order providing for the filing of objections by the respondent to the proposed final order of the Commission in modification of the order to cease and desist contained in the hearing examiner's initial decision filed February 7, 1962; and

Respondent having been served with said order of July 18, 1962, and not having filed objections to the proposed final order of the Commission within the time granted in said order; and

The Commission having determined that its proposed final order should be adopted and entered as the final order of the Commission:

It is ordered, That the exceptions of counsel supporting the complaint to the initial decision be, and they hereby are, granted.

It is further ordered, That the initial decision be modified by striking therefrom finding number 6 on pages 904 and 905 thereof and substituting therefor the following:

6. Respondent on December 22, 1959, filed with the Commission a continuing guaranty in the form prescribed by the aforesaid Rules and Regulations, wherein he stated that he is engaged in the manufacturing, marketing or handling of textile fiber products and wherein he guaranteed that every such textile fiber product contained in each shipment, or other delivery, made by him will not be misbranded or falsely or deceptively invoiced or advertised within the meaning of the Textile Fiber Products Identification Act and the Rules and Regulations thereunder.

By the provisions of Section 10(a) of said Act, no person is guilty of an unlawful act under Section 3 thereof relating to misbranding and false advertising of textile fiber products if he relied on a continuing guaranty on file with the Commission which, by the Commission's Rules of Practice, is made of public record. It is not necessary for the guarantor to represent in writing to a person receiving textile fiber products from him that he has such a continuing guaranty on file in order for that person to be entitled to rely on such guaranty. The filing of such continuing guaranty with the Commission is constructive notice of the existence of such guaranty.

It has hereinabove been found that during the period in which respondent's continuing guaranty on file with the Commission was in effect, respondent shipped and delivered textile fiber products which were misbranded. It is, therefore, found that respondent furnished a false guaranty.

It is further ordered, That the hearing examiner's order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent Moe Osher, an individual, trading as Reliable Handkerchief Co., and his representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and the importation into the United States of textile fiber products; and in connection with selling, offering for sale, advertising, delivering, transporting, or causing to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and in connection with selling, offering for sale, advertising, delivering, transporting, and causing to be transported, after shipment in commerce, textile fiber products, either in their original state or which have been made of other textile fiber products shipped in commerce; as the term "commerce" is defined in the Textile Fiber Products Identification Act, of handkerchiefs or other "textile fiber products", as such products are defined in and subject to the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.
2. Furnishing false guaranties that textile fiber products are not misbranded under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the initial decision as modified herein be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist as set forth herein.

Complaint

61 F.T.C.

IN THE MATTER OF
SPADA FRUIT SALES AGENCY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(c)
OF THE CLAYTON ACT

Docket C-248. Complaint, Oct. 3, 1962—Decision Oct. 3, 1962

Consent order requiring Tampa, Fla., packers of citrus fruit to cease paying brokerage or discounts in lieu thereof to brokers or direct buyers on purchases for their own accounts for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Spada Fruit Sales Agency, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located in Tampa, Florida, with mailing address as P.O. Box 364, Tampa, Fla.

PAR. 2. Respondent is now and for the past several years has been engaged in the business of packing, selling and distributing citrus fruit, such as oranges, tangerines and grapefruit, all of which are hereinafter sometimes referred to as citrus fruit or fruit products. Respondent sells and distributes its citrus fruit directly, and in many instances through brokers, to buyers located in various sections of the United States. When brokers are utilized in making sales, respondent pays said brokers for their services a brokerage or commission, usually at the rate of 5 cents per carton or 10 cents per 1½ bushel box or equivalent. Respondent's annual volume of business in the sale and distribution of citrus fruit is substantial.

PAR. 3. In the course and conduct of its business over the past several years, respondent has sold and distributed and is now selling and distributing citrus fruit, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers located in the several states of the United States other than the State of Florida in which respondent is located. Respondent transports, or causes such citrus fruit, when sold, to be transported from its place of business or packing plant in the State of Florida, or from other places within said State, to such buyers or to the buyers' customers located in various other states of the United States. Thus there has been, at all