

Complaint

IN THE MATTER OF

EMPIRE SPORTING GOODS MFG. CO., INC., ET AL.

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

*Docket C-294. Complaint, Jan. 8, 1963—Decision, Jan. 8, 1963*¹

Consent order requiring New York City manufacturers of athletic uniforms and accessories to cease setting forth fictitious prices in catalogs and other printed matter as usual prices; and to cease violating the Textile Fiber Products Identification Act by falsely labeling boys' cotton lined rayon jackets as "50% rayon, 50% cotton", failing to label products with the name of the manufacturer, etc., falsely advertising products as "flannel", "gabardine", "poplin", and "twill" without disclosing the true generic names of constituent fibers, using fiber trademarks on men's shirts without full disclosure of fiber content, and failing to comply in other respects with requirements of the Act.

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 believe that Empire Sporting Goods Mfg. Co., Inc., a corporation, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, individually and as officers 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 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 Empire Sporting Goods Mfg. Co., 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 443 Broadway in the city of New York, N.Y.

Respondents Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman are individuals and officers of the corporate respondent, and they formulate, direct and control the acts and practices of said corporation, including the acts and practices hereinafter set forth. All of said respondents cooperate and act together in the performance of the acts and practices hereinafter set forth. Their business address is the same as that of the corporate respondent.

¹ Enforcement of paragraphs 1 and 2 of the order, prohibiting deceptive pricing, was suspended by order of the Commission dated December 5, 1963.

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PAR. 2. Respondents are now, and have been for more than two years last past, engaged in the business of manufacturing, selling and distributing athletic uniforms and accessories, and cause such merchandise when sold to be transported to distributors and retailers in States other than the State of New York. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their said business, respondents at all times mentioned herein have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said merchandise, respondents have caused to be printed, and distributed and supplied to retailers, catalogs and other printed matter, for use by said retailers in the resale of respondents' merchandise. Said catalogs describe the numerous articles of merchandise offered for sale by respondents and in connection therewith set forth a price for each of said articles. Typical and illustrative of such listing are the following:

Deluxe All Nylon Knit Game Shell Pants 19.50 each.
Football Jerseys Rayon and Cotton 7.00 each.
Boys Satin Jacket 6.80 each.
Boys Plastic Helmet with Face Guard 4.20 each.
No. 320 In Stock (Baseball Suit) 9.30 each.
#333 Stock Little League Uniform 8.00 each.
#1019 Wool Felt Baseball Cap 15.00 doz.
#348 Official Umpire Shirt 6.50 each.
#3014 Mens Baseball Undershirt 2.30 each.

Respondents in inserts, distributed to retailers and others to whom their catalogs are sent, make the following statements:

50% Off All Prices Listed.

P.S. In 6 months, when we print our next catalog, we will offer to you, our customer (at cost) as many catalogs as you desire with your name, address and telephone number instead of Empire's name, address and telephone number. Send them to your customers and new prospects. This is a sure way to perk up some business.

Special Offer to Our Customers. Order a minimum of 25 of our catalogs with your name imprinted and Empire will pay ½ the cost. Empire does *not* make any profit on this sale. We know that these catalogs will help your sales and we're willing to help pay the cost.

Retailers, to whom said catalogs are distributed by respondents as aforesaid, display them to purchasers and prospective purchasers for the purpose of soliciting the sale of said products.

PAR. 5. Through the use of the prices set forth in connection with the illustrations and descriptions of their articles of merchandise, respondents represent, and have represented, that said prices or price amounts set forth in their catalogs are the usual and customary or generally prevailing prices at which said articles are sold at retail in the trade areas in which said catalogs are distributed and said articles of merchandise are offered for sale.

PAR. 6. In truth and in fact, retailers who purchase said articles of merchandise from respondents resell them at less than the prices represented, and said prices are fictitious and in excess of the prices at which said articles are generally sold at retail and in excess of the customary and usual retail prices of said articles in the trade areas in which said catalogs are distributed and said representations are made.

PAR. 7. Respondents by the aforesaid practice of publishing said prices in connection with the description of said articles of merchandise in their catalogs place in the hands of retailers and others the means and instrumentalities of representing, directly or by implication, that such prices are the usual and customary retail prices for such merchandise or the prices at which said articles are generally sold at retail.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 9. 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, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or 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. 10. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the

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Textile Fiber Products Identification Act and the Rules and 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 boys' jackets with labels which set forth the fiber content as "50% rayon, 50% cotton", thereby implying that the body of such jacket was of the aforesaid fiber composition, whereas, in truth and in fact, the body of such jacket was composed entirely of rayon with the lining being composed entirely of cotton.

PAR. 11. 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 prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed to disclose the name, or other identification issued and registered by the Commission, of the manufacturer of the product or of one or more persons subject to Section 3 of the said Act with respect to such products.

PAR. 12. Certain of said textile fiber products were further 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) Labels were not securely affixed to textile fiber products in such a manner as to remain on or affixed to such textile fiber products throughout the sale, resale, distribution and handling of the products and until such products were sold and delivered to the ultimate consumer, in violation of Rule 15 of the aforesaid Rules and Regulations.

(b) The required information as to fiber content was not set forth on the required label in such a manner as to separately show the fiber content of each section of textile fiber products containing two or more sections, in violation of Rule 25(b) of the aforesaid Rules and Regulations.

PAR. 13. 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 the aforesaid disclosures or implications as to fiber content, but not limited thereto, were the terms "flannel", "gabardine", "poplin" and "twill".

Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by the means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in that the true generic names of the fibers contained in such products were not set forth.

PAR. 14. Certain of said textile fiber products were further 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.

Among such textile fiber products, but not limited thereto, were textile fiber products which were falsely and deceptively advertised, by means of catalogs, price lists, and other printed matter distributed by respondents throughout the United States, in the following respects:

(a) Fiber trademarks were used in advertising textile fiber products, namely, men's shirts, without a full disclosure of the fiber content information required by said Act and Rules and Regulations in at least one instance in said advertisements, in violation of Rule 41 (a) of the aforesaid Rules and Regulations.

(b) Fiber trademarks were used in advertising textile fiber products, namely, men's shirts, containing only one fiber and such fiber trademarks did not appear at least once in said advertisements in immediate proximity and conjunction with the generic name of the fiber in plainly legible and conspicuous type of lettering, in violation of Rule 41 (c) of the aforesaid Rules and Regulations.

PAR. 15. The aforesaid acts and practices of respondents, as herein alleged in the aforesaid Paragraphs 10, 11, 12, 13, and 14, are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and along with the other aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 (a) (1) of the Federal Trade Commission Act.

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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 and the Textile Fiber Products Identification Act, 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 Empire Sporting Goods Mfg. Co., 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 443 Broadway, in the city of New York, State of New York.

Respondents Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman are officers of said corporation and their 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 Empire Sporting Goods Mfg. Co., Inc., a corporation, and its officers, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of athletic uniforms or accessories, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of catalogs, brochures, price lists, other point-of-sale material or by

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any other means, that any amount is the usual and customary retail price of merchandise in the trade area or areas where the representations are made when it is in excess of the generally prevailing retail price or prices at which said merchandise is sold in said trade area or areas.

2. Furnishing or otherwise placing in the hands of retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That respondents Empire Sporting Goods Mfg. Co., Inc., a corporation, and its officers, and Frank Rauch, Hobart Rauch, Melvin Rauch, Hyman Rauch and Harold Meiselman, individually and as officers of said corporation, and respondents' 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, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product, which has 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 any textile fiber product, whether in its 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. 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.

3. Failing to securely and conspicuously affix labels to textile fiber products in such a manner as to remain on and attached thereto throughout the sale, resale, distribution and handling of the product and until sold and delivered to the ultimate consumer.

4. Failing to separately set forth the required information as to fiber content on the required label in such a manner as

to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, by disclosure or by implication, as to the fiber contents 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 Sections 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 a fiber trademark in advertising textile fiber products without making a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type.

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

SEIDENBACH'S INC., ET AL.