

Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce and prior to the time such textile fiber product is sold and delivered to the ultimate consumer.

It is further ordered, That each of 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
PAINTSET FASHIONS, INC., ET AL.

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

Docket 8468. Complaint, Feb. 13, 1962—Decision, Sept. 17, 1963

Order dismissing complaint charging New York City dress manufacturers with violating the Flammable Fabrics Act for the reason that the fabrics complained of as being dangerous when worn were silk handkerchiefs less than 24 inches square and so exempted from the provisions of the Act when complaint was issued.

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 Paintset Fashions, Inc., a corporation, and Louis Smolowe and Herbert Smolowe, 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 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 Paintset Fashions, Inc., is a corporation, duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Louis Smolowe

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and Herbert Smolowe are president and treasurer, respectively, of the corporate respondent and formulate, direct, and control its policies, acts, and practices. The business address of all respondents is 49 West 37th Street, New York, New York.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported and caused to be transported, in commerce; and have transported and caused to be transported for the purpose of sale or delivery after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, articles of wearing apparel, as the term "article of wearing apparel" is defined therein, which articles of wearing apparel were, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

Among the articles of wearing apparel mentioned above were dresses style Numbers 7563 and 7564 which contained fabric decoration consisting of silk squares flammable under the Flammable Fabrics Act.

PAR. 3. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have manufactured for sale, sold and offered for sale, articles of wearing apparel made of fabric which was, under Section 4 of the Act, as amended, so highly flammable as to be dangerous when worn by individuals, and which fabric, as the term "fabric" is defined in the Flammable Fabrics Act, had been shipped and received in commerce.

Among the articles of wearing apparel mentioned above were dresses style Numbers 7563 and 7564 which contained fabric decoration consisting of silk squares flammable under the Flammable Fabrics Act.

PAR. 4. Respondents have furnished their customers with a guaranty with respect to the articles of wearing apparel mentioned in Paragraphs 2 and 3 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 articles of wearing apparel are not, in the form delivered by respondents, so highly flammable as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of said articles of wearing apparel, respondents have not made reasonable and representative tests.

PAR. 5. The acts and practices of respondents herein alleged were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder and as such 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. Thomas J. Anderson for the Commission.

Mr. H. S. Tunick, New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

On February 13, 1962, the Federal Trade Commission issued its complaint, charging that the named respondents were and are engaging in acts and practices in violation of the Flammable Fabrics Act and the rules and regulations promulgated thereunder, which 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.

The said complaint reads in part, "Respondents * * * have manufactured for sale * * * articles of wearing apparel * * * so highly flammable as to be dangerous when worn by individuals. Among the articles of wearing apparel mentioned above were dresses." It is further alleged in the complaint that respondents have furnished their customers a guaranty with respect to the mentioned wearing apparel to the effect that tests made under procedures provided in the Flammable Fabrics Act show that such articles of wearing apparel are not highly flammable as to be dangerous when worn by individuals and that the guaranty was false in that such tests had not been made. On behalf of the respondents, a motion was filed for a more definite statement of the complaint in certain particulars. Counsel for the parties met with the hearing examiner for a prehearing conference at Washington, D.C., on May 3, 1962,¹ at which time, among other things, the said motion was considered and disposed of on the record.

Respondents in their motion and in the discussions at the prehearing conference expressed indignation (and justly so, in light of the admitted facts) with reference to an official press release of the

¹ Louis Smolowe, one of the respondents and president of the corporate respondent, died on April 21, 1962. A prehearing conference scheduled for April 24, 1962, was reset for May 3, 1962.

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Commission in connection with issuance of the complaint in this case, stating in part:

The complaint alleges the concern has manufactured dresses which were so highly flammable as to be dangerous when worn.

It is their position that the statement was unfair and harmful to the respondents in that the public and trade are led to think that the fabrics in their dresses are flammable, whereas the only thing that is involved here is a small silk handkerchief which accompanied the dresses.

Pursuant to the request of complaint counsel at the prehearing conference, the complaint was amended by adding after the word "dresses" appearing in the last sentence in paragraphs 2 and 3 thereof the words and figures "style numbers 7563 and 7564 which contained decoration consisting of silk squares flammable under the Flammable Fabrics Act." The respondents filed answer to the complaint, as amended, which is in the nature of a general denial and alleges "that the complaint relates solely to certain silk handkerchiefs less than twenty-four inches square which the Federal Trade Commission has held in its opinion issued May 18, 1954, to be not covered by the Flammable Fabrics Act, as amended."

Hearings were held in the city of New York, New York, on June 13, 14 and 15, 1962, and on the latter date the record was closed for the receipt of evidence. Proposed findings of fact, conclusions of law, and order were filed by counsel for the parties. The hearing examiner has given consideration thereto and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Paintset Fashions, Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Louis Smolowe died on April 21, 1962. At all times mentioned in the complaint, and up to the time of his death, he was president of the respondent corporation and during said period he alone formulated, directed and controlled its policies, acts and practices. Richard E. Smolowe, a son of said respondent, succeeded his father as president and now controls the policies of the corporation. The respondent Herbert Smolowe, a brother of said Louis Smolowe, is treasurer of the corporate respondent, but at no time mentioned in the complaint or thereafter did he formulate, direct and control its policies, acts and practices. The business address of all respondents is 49 West 37th Street, New York, New York.

The respondent corporation is engaged in the manufacture and sale of women's wash dresses and kindred products. It has three plants located at Walhalla, South Carolina, Salem, South Carolina, and Lavonia, Georgia, where it manufactures upwards of 72,000 garments a week. It sells direct to chainstores, mail-order houses, and other retailers and ships its products from its Walhalla plant to its customers located in various places throughout the United States. Paintset Fashions does not weave any of the fabrics used in its products. Although some synthetics are used, the bulk of its garments are made of cotton material. The respondent corporation has imported into the United States some of the materials used in its dresses, but there is no evidence in the record that it imported any articles of wearing apparel.

The charge herein is based upon the sale and delivery during the month of May 1961 of approximately 5,000 cotton dresses known as Styles Nos. 7563 and 7564. Each dress was sold with a small silk handkerchief which was looped through the ring of a belt.² The belt has a prong buckle and is held in place on the dress by passing through a cotton crochet string loop affixed to each side of the dress. The handkerchief was easily removable from the belt and the belt was easily removable from the dress. The handkerchief was not sewn or otherwise permanently attached to the dress. No claim is made of any violation of the Flammable Fabrics Act as regards such dresses, or the fabrics or materials of which they were made, except insofar as the handkerchiefs are concerned.

The handkerchiefs sold with the dresses were squares that varied in size from 7 to 10 inches with rounded corners and a sewn rolled edge. Paintset Fashions purchased them in finished form from a supplier located in New York, New York, and they were placed on the belts as accessories without any processing or other change in form.

The fabric (a textile free from nap, pile, tufting, block or other type of raised fiber surface) from the handkerchiefs involved was submitted to tests as prescribed in the procedures provided under the Flammable Fabrics Act and pursuant to the provisions of the said Act, as amended, was classified as Class 3, rapid and intense burning, the time of flame spread being less than three and one-half seconds, which is deemed under the Act to be so highly flammable as to be dangerous when worn by individuals.³

² Respondent, in a previous year or years on other style numbers than the ones involved here, pinned the handkerchief to some dresses by the use of a very small safety pin.

³ The report of the laboratory tests shows that the fabrics tested passed the tests before washing but failed after washing.

In the industry a handkerchief is an article made of a woven fabric with a finished edge not exceeding 24 inches in its finished size. They are accessories and are used for utilitarian or decorative purposes, or both. Some highly decorative handkerchiefs are frequently used for utilitarian purposes. The type of handkerchief involved here is strictly for ornamentation in that it has no absorbency to it.

Women have customarily purchased handkerchiefs separately for ornamental purposes as accessories to their costumes and have applied them by tucking them in their pockets, sleeves, buttonholes or belts, or by pinning or tying them to their dresses or other garments.

For many years, manufacturers of dresses have been selling dresses with handkerchiefs either tucked in pockets or pinned or looped or tied to the garment, the handkerchiefs being easily removable so that they can be readily replaced by another handkerchief or other accessory to provide color and variety to the costume. Since the Flammable Fabrics Act went into effect, manufacturers have sold handkerchiefs with dresses in this way on the assumption that a handkerchief was not covered by the Act. The basis for such an assumption was an interpretation made by the Commission.

On April 20, 1954, a notice was published in the Federal Register that the Federal Trade Commission would, beginning on May 11, 1954, give consideration to an interpretation of the term "article of wearing apparel" as it is used in the Flammable Fabrics Act. The matters to be considered were: (1) whether handkerchiefs up to a finished size of 24 inches square, and (2) whether handkerchiefs and scarfs (irrespective of size) fall within the definition of the term "article of wearing apparel" as it is used in the Flammable Fabrics Act. Interested parties were invited to participate by submitting in writing to the Commission on or before such date their views, arguments or other data pertinent to the matter. The Commission, after due consideration of the matter, together with all views, arguments and other data submitted to it, and being fully advised in the premises, issued an opinion on May 18, 1954:

(1) That handkerchiefs up to a finished size of twenty-four (24) inches square are not "articles of wearing apparel" as that term is used in the Flammable Fabrics Act.

The Commission retained under advisement the question relating to scarfs, and on September 13, 1954 issued its opinion that scarfs are "articles of wearing apparel" as that term is used in the Flammable Fabrics Act.

Mat Milstein, director-counsel of the House Dress Institute, which is a national trade association of the dress manufacturers, was called as a witness on behalf of the respondents. He has been associated

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with the Institute since it was formed in 1941. When asked if he occupied some position on the committee related to the Flammable Fabrics Act, he testified:

Yes. Soon after the Act was passed the Federal Trade Commission appointed an advisory commission to set up proposed rules and regulations under the Act. They invited representatives of retailers, textile people, all along the line from the mills up to the makers, and my impression is that I was the only apparel manufacturer representative on the committee.

We worked throughout the last half of 1953 and at least the first quarter or more of 1954 in setting up the proposed rules and regulations which, with some modifications, eventually became the rules of the Commission. I met with that committee every time it met.

When asked about the gist of the aforementioned interpretation by the Commission, he replied:

Basically, it exempted from the Act, the provisions of the Act, handkerchiefs which were below twenty-four inches in length and width by eliminating them from the definition of articles of wear and apparel. That is the view.

Then he went on to say:

I can tell you what our opinion was as experts in the field, mine and other executives in the apparel field. We met from time to time to discuss these things.

Our impression was that having exempted handkerchiefs below that size, without exception, that this meant that there was no question but that the current practice, which we had a right to believe the Commission was aware of, of selling dresses with handkerchief accessories, was perfectly legal under the statute and rules.

We based this upon several legal factors:

Number one: The awareness of the Commission, that this practice was going on.

Number two: Following that, the failure of the Commission to make an exception as, for example — and I am sure you are aware of it — that the Act and the regulations, when it excepted certain items as hats, footwear and gloves, said, "Except when they are affixed to and become an integral part of the garment."

Had the Commission intended to deny the right, or if that had been the interpretation of the law which could have been challenged, handkerchiefs looped around belts and so on were to be exceptions to this exception, they could have said so.

They had the example right before them; they did not. Therefore, our impression was that this practice was therefore approved.

Furthermore, we leaned very heavily, and have through the years, upon the opinion that all through the Act and the regulations, the regulations apply to fabrics contained in articles of wear and apparel, and in our opinion, and in my opinion today, a handkerchief looped around a belt is not a fabric "contained in," and that is the only word used throughout the statute.

The facts as hereinbefore found are in the main not in dispute and the question presented is whether, under the related circumstances, a

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handkerchief is an "article of wearing apparel" or a "fabric" within the meaning of the Flammable Fabrics Act. In answer to such question, the pertinent parts of the Act read:

Sec. 2. DEFINITIONS.

Sec. 2. As used in this Act—

* * * * *

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however*, That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further*, That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further*, That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act.

* * * * *

Sec. 3. PROHIBITED TRANSACTIONS.

Sec. 3.(a) The manufacture for sale, the sale * * * of any article of wearing apparel which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The sale * * * of any fabric which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

The Flammable Fabrics Act became law on June 30, 1953, and under the provisions thereof became effective July 1, 1954. The Act was amended on August 23, 1954, by adding what is subparagraph (c) of Section 4 with respect to standards of flammability in the case of certain textiles. The bill that resulted in the amendment originated in the Senate (S. 3379). The bill as reported out by the Senate Committee on Interstate and Foreign Commerce and passed by the Senate contained two amendments to the Act. The first amendment would exclude "scarfs made of plain surface fabrics" from the definition of wearing apparel, and the second dealt with conditions under which fabrics or articles of wearing apparel would be tested. The report of the Senate Committee (Report No. 1323) seems to throw some light on the subject matter with which we are concerned in this proceeding. With reference to scarfs, it said:

The first of the proposed amendments would exclude "scarfs made of plain surface fabrics" from the definition of wearing apparel in the act. Thus scarfs, whether popularly called a scarf or some other similar name, as a square, stole, or mantilla, would be excluded absolutely from the act, as hats, gloves, and footwear are excluded under certain conditions in the present act. There is no valid reason why scarfs, mantillas, squares, or stoles should be included in the act, as they can be more quickly removed from the person than most hats, gloves, and footwear. A claim could be made that they are not included under the present law, because they are not wearing apparel but merely an accessory, but committee counsel has advised your committee that some of the legislative history might be considered to compel an interpretation that they are included. As the Federal Trade Commission and the Department of Commerce agree that scarfs, squares, or stoles should be excluded specifically, provided they are made of plain surface fabrics, this amendment is recommended by your committee. This amendment is intended to permit the continued sale of conventional sheer materials, especially sheer silk, net and lace, quite commonly used for scarfs or mantillas, but not to exclude those having a fuzzy surface which may be liable to flash burning.

The Committee report further stated:

Some of the communications received by your committee from businessmen pointed out that a considerable amount of sheer silk from Japan and of other domestic and imported sheer conventional fabrics are used in the manufacture of flags and handkerchiefs. Some of the correspondents requested that they be exempted from the application of the Flammable Fabrics Act. Obviously, flags cannot by any stretch of the imagination be considered articles of wearing apparel and are not contained within the scope of the act. Committee counsel has advised your committee that a handkerchief is a mere accessory and cannot reasonably be considered as an article of wearing apparel within section 2 (d) of the act. A handkerchief can easily be discarded or dropped if it is ignited. It was not intended at the time of the enactment of the act to include handkerchiefs as an "article of wearing apparel" or "clothing worn or intended to be worn by individuals." Obviously, one does not normally wear a handkerchief, but simply carries it as an accessory either in one's hand or in a pocket. Under usual circumstances, it may be quickly removed when ignited and does not constitute the type of unusual hazard which the act was intended to ban. Accordingly, your committee believes that this doubt on the part of industry can easily be disposed of through administrative regulations.

The House Committee on Interstate and Foreign Commerce to whom was referred the bill (S. 3379) amended the Senate measure by striking out all after the enacting clause and inserting the language which is now subsection (c) of Section 4 of the Flammable Fabrics Act. The report of the House Committee had this to say:

Your committee is convinced that scarfs should be subject to the provisions of the law just as any other item of wearing apparel. They can be as much a danger to human safety as any other improperly protected garments. Scarfs are worn around the head or neck and tied on with a knot which may not be easily removable. Once ignited, the danger of the hair catching on fire is very great. The scarfs cannot be readily discarded under such circumstances.

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Handkerchiefs up to 24 inches square, according to an administrative ruling of the Federal Trade Commission, are not "articles of wearing apparel" within the meaning of the Flammable Fabrics Act, and are, therefore, exempted from the provisions of this law.

A reading of the language employed in the Act, together with interpretations placed thereon by the Federal Trade Commission and the Committees of Congress, leads to the conclusion that the handkerchief, which is the subject of the controversy herein, is not an "article of wearing apparel" or "fabric" within the meaning of the Flammable Fabrics Act.

Paragraph 4 of the complaint reads:

PARAGRAPH FOUR: Respondents have furnished their customers with a guaranty with respect to the articles of wearing apparel mentioned in Paragraphs Two and Three 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 articles of wearing apparel are not, in the form delivered by respondents, so highly flammable as to be dangerous when worn by individuals. There was reason for respondents to believe that the articles of wearing apparel covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that with respect to some of said articles of wearing apparel, respondents have not made reasonable and representative tests.

The record shows that a Continuing Guaranty, dated June 30, 1960, was filed with the Commission by respondent corporation and the invoices of Paintset Fashions, Inc., carry the following printed statement: "CONTINUING GUARANTY UNDER THE FLAMMABLE FABRICS ACT AND THE TEXTILE FIBER PRODUCTS ACT FILED WITH THE FEDERAL TRADE COMMISSION." The respondent corporation did not make any tests of fabrics, but relied on guaranties which it received from suppliers of fabrics that it used in its garments. Garment manufacturers receiving such a guaranty may rely thereon in good faith and, in turn, may issue similar guaranties to their customers. However, the respondent corporation did not ask for or receive a guaranty from the supplier of the handkerchief for the reason that it was of the opinion that such an item was not covered by the Act. The guaranty filed by the respondent corporation with the Commission would only be considered false if the handkerchiefs in question are regarded as wearing apparel.

If the hearing examiner had concluded that the respondents had violated provisions of the Flammable Fabrics Act, he would dismiss the complaint on the grounds that the respondents had abandoned and discontinued the acts charged in the complaint.

Charles T. Rose, an investigator of the Commission working out of its New York office, testified "that we, the government, were in the process of investigating a number of firms for compliance with the Flammable Fabrics Act, a number of firms that were using silk squares as decorations upon their dresses." In connection with such assignment, he called on the respondents on May 31, 1961, at their business address in New York City to get some "background information" which was supplied to him. At that time in speaking of the silk squares, he told respondent Herbert Smolowe: "I would say that most chances are that these things are dangerously flammable and it would be advisable not to use them." The question was then asked Mr. Rose, "Did he tell you what he was going to do with it in that connection?", to which he replied: "I think they said they were not going to use them any longer."

Mr. Herbert Smolowe in this connection testified:

Q. He told you at that time in his opinion the handkerchief did not meet the requirements of the Flammable Fabrics Act?

A. That is correct.

Q. Was it your intention to violate the Flammable Fabrics Act?

A. Never.

Q. When this was called to your attention, what did you do?

A. Well, at that time Mr. Louis Smolowe directed the factories, via teletype message, to discontinue the use of the handkerchief immediately and to take them off the garments that we had in stock.

Q. Now, that message was sent when? The same day that Mr. Rose was there?

A. The same day that Mr. Rose was there.

Q. They were instructed not to ship out any garments with handkerchiefs?

A. That is correct.

Q. They were instructed to remove the handkerchiefs from all garments in stock?

A. That is correct.

Q. When the handkerchiefs were taken off the garments in stock, were the garments sold without the handkerchief?

A. Yes, they were.

Mr. Herbert Smolowe testified further:

Q. Subsequent to the visit of Mr. Rose, did you purchase any more handkerchiefs?

A. No, we didn't.

Q. Did you produce any more garments with handkerchiefs?

A. No, we did not.

Q. Did you sell any more garments with handkerchiefs?

A. Not with handkerchiefs, no.

Q. Until Mr. Rose came were you aware of any interpretation on the part of the Commission that a handkerchief accompanying a dress was subject to the provisions of the Flammable Fabrics Act?

A. No, I did not.

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Q. Do you know of any such existing interpretation?

A. No, I do not.

Mr. Richard Smolowe, who succeeded his deceased father, Louis Smolowe, as president of the respondent corporation, testified:

Q. Now, Mr. Smolowe, do you recall the occasion when Mr. Rose appeared at your firm's office at approximately about May of last year?

A. I didn't have the pleasure of meeting Mr. Rose, but I knew when he appeared immediately after his visit. We discussed fully what his visit was about.

Q. You discussed that with whom?

A. Mr. Louis Smolowe called us in — called me in.

Q. Did you receive certain instructions?

A. Yes, sir.

Q. What were those instructions?

A. The instructions were that we were never to use any of these type handkerchiefs, any of this type accessory again, and that the lots that were in work were to have the handkerchiefs removed, were not to be put on prior to being shipped — not to be attached prior to shipment — and the accounts to whom they were sold but not yet shipped were to be notified immediately that they were to be shipped without this handkerchief.

Q. Were such instructions issued?

A. The factory was notified immediately; the accounts were notified within a day.

Q. And the factory, did it carry out those instructions?

A. Yes, sir.

Q. As a result of those instructions, the handkerchiefs were removed from all of your garments then in stock or in work?

A. Yes, sir; on all garments that we had physical possession of, they were removed.

Q. And all shipments from that time on were without handkerchiefs?

A. Yes, sir.

Q. Since May 31st of last year have you made or sold any of your garments with handkerchiefs of this type?

A. No, sir.

Q. As a matter of fact, have you made any handkerchiefs of any type?

A. No, sir.

Q. Are you now making or selling any garments with these handkerchiefs?

A. No.

Q. And do you propose to at any time in the future, to sell garments with this type of handkerchief?

A. Very definitely not.

* * * * *

Q. Mr. Smolowe, are you in sympathy with the purposes of this hearing before the Federal Trade Commission?

A. Yes, sir.

Q. Do you desire to conform to all of the requirements of the Flammable Fabrics Act?

A. Yes.

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Q. Has that always been your desire and practice?

A. It has always been our desire and has always been the policy of the company.

Complaint counsel and counsel representing respondents stipulated:

10. Except for certain consent settlement matters (Warshawer & Franck, et al, C-58; Advance Juniors, Inc., et al, C-133; SGL Manufacturing Company, et al., C-134) involving complaints containing charges similar to those in Docket 8468, the instant matter, the Federal Trade Commission has not made any formal announcement or interpretation respecting the application of the Flammable Fabrics Act to ornamentations or decorations on wearing apparel, or silk handkerchiefs or silk squares on or with dresses.

11. Other than the complaint issued in the instant matter, Docket No. 8468, no complaint has issued against Paintset Fashions, Inc., by the Federal Trade Commission.

12. As of May 29, 1962, there is no evidence with the Federal Trade Commission that Paintset Fashions, Inc., continued to sell silk squares or silk handkerchiefs with or affixed to a dress after the visit of Commission Investigator, Charles T. Rose, on May 31, 1961.

Under the state of the record, it should be convincing that the respondents have abandoned and discontinued the acts which are the basis of the complaint herein, and it is the opinion of the Hearing Examiner that a resumption of the acts by the respondents is not likely.

For the reasons hereinbefore stated,

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

ORDER DENYING EXCEPTIONS TO THE INITIAL DECISION AND DISMISSING COMPLAINT

This matter having been heard upon complaint counsel's exceptions to the initial decision and brief in support thereof, respondents' opposing brief, and upon oral argument, and the Commission having considered said exceptions and opposition; and

It appearing that the complaint herein, as amended, charges respondents with violating the Flammable Fabrics Act in connection with their manufacture and distribution of certain dresses which contain fabric decorations consisting of silk squares flammable under said Act, and with furnishing false guarantees with respect to such items in violation of said Act; and

It further appearing that the hearing examiner ruled that the aforesaid silk squares are handkerchiefs of a size of less than twenty-four inches square and are exempted from the provisions of the Flammable Fabrics Act by reason of the Commission's interpretive opinion of May 18, 1954 (19 Federal Register 2985), that "handkerchiefs up

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to a finished size of twenty-four (24) inches square are not 'articles of wearing apparel' as that term is used in the Flammable Fabrics Act"; and

It further appearing that the hearing examiner also ruled that the alleged practices have been abandoned by respondents and are not likely to be resumed; and

The Commission, having determined that the Commission's aforesaid opinion of May 18, 1954, was subject to the interpretation placed upon it by the respondents and, furthermore, that the industry as a whole had apparently placed a similar interpretation on said opinion; and

The Commission having recently clarified the responsibilities of garment manufacturers with respect to silk squares affixed to garments by promulgation of the following amendment to Rule 6 of the Rules and Regulations under the Flammable Fabrics Act (16 C.F.R. 302.6; 28 Federal Register 6535, June 26, 1963, effective July 26, 1963), thereby resolving the problem presented herein on an industry-wide basis:

(c) Except as provided in paragraph (d) of this section, handkerchiefs not exceeding a finished size of twenty-four (24) inches on any side or not exceeding five hundred seventy-six (576) square inches in area are not deemed "articles of wearing apparel" as that term is used in the Act.

(d) Handkerchiefs or other articles affixed to, incorporated in, or sold as a part of articles of wearing apparel as decoration, trimming, or for any other purpose, are considered an integral part of such articles of wearing apparel, and the articles of wearing apparel and all parts thereof are subject to the provisions of the Act. Handkerchiefs or other articles intended or sold to be affixed to, incorporated in, or sold as a part of articles of wearing apparel as aforesaid constitute "fabric" as that term is defined in Section 2(e) of the Act and are subject to the provisions of the Act where such handkerchiefs or other articles constitute textile fabrics as the term "textile fabric" is defined in paragraph (a) (6) of § 302.1.

and

The Commission, without passing on the validity of the hearing examiner's rulings, believing that the public interest will best be served by dismissing the complaint herein and allowing the respondents voluntarily to conform their practices to the new Rule 6 set forth above:

It is ordered, That the exceptions to the initial decision filed by counsel supporting the complaint be, and they hereby are, disallowed.

It is further ordered, That the hearing examiner's initial decision