

tion, and William N. Bostic, individually and as an officer of said corporation, and as a sole proprietor doing business as Southern Patio Company, and as Southern Aluminum Sales, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by each respondent named in this order, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF
WORCESTER DUSTING MILLS, 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-874. Complaint, Jan. 8, 1965—Decision, Jan. 8, 1965

Consent order requiring Worcester, Mass., affiliated yarn manufacturers to cease violating the Textile Fiber Products Identification Act by falsely labeling, invoicing, and advertising the fiber content of certain yarns, such as labeling "100% Nylon" when in fact the product contained substantial amounts of other fibers, by failing to set forth on labels the true generic names of fibers and percentages thereof; and failing to maintain proper records showing the fiber content of their textile fiber products.

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 Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., Whittaker Fibres, Inc., corporations, and Louis P. Pemstein and Bernard L. Pemstein, individually and as officers of said corporations, and Prescott Textile Co., Inc., a corporation, and Bernard L. Pemstein, 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 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. Respondents Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., Whittaker Fibres, Inc., and Prescott Tex-

tile Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts. Respondents Louis P. Pemstein and Bernard L. Pemstein are officers of corporate respondents, Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., and Whittaker Fibres, Inc. They formulate, direct and control the acts, practices and policies of said corporate respondents, including the acts and practices hereinafter set forth.

Respondent Bernard L. Pemstein is an officer of Prescott Textile Co., Inc. He formulates, directs and controls the acts, practices and policies of said corporate respondent, including the acts and practices hereinafter set forth.

The respondents are engaged in the manufacture and sale of yarn with their principal office and place of business located at 91 Prescott Street, Worcester, Massachusetts.

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, manufacture for 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 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. 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 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 with labels which set forth the fiber content as "Nylon," and invoices which set forth the fiber content of textile fiber products as "100% nylon," whereas in truth and in fact, said products contained substantially different amounts of fibers than represented.

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 names of the fibers present; and
2. To disclose the percentage of such fibers; and
3. To disclose the name, or other identification issued and registered by the Commission of the manufacturer of the product or one or more persons subject to Section 3 of the said Act, with respect to such product.

PAR. 5. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 6. 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 or practices, in commerce, under 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 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. Respondents Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., Whittaker Fibres, Inc., and Prescott Textile Co., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts.

Respondents Louis P. Pemstein and Bernard L. Pemstein are officers of Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., and Whittaker Fibres, Inc.

Respondent Bernard L. Pemstein is also an officer of Prescott Textile Co., Inc.

The office and principal place of business of all respondents is located at 91 Prescott Street, in the city of Worcester, State of Massachusetts.

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 Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., and Whittaker Fibres, Inc., corporations, and Louis P. Pemstein and Bernard L. Pemstein individually and as officers of said corporations and Prescott Textile Co., Inc., a corporation, and Bernard L. Pemstein, individually and as an officer of said corporations, 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 textile fiber 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 respondents Worcester Dusting Mills, Inc., Whittaker Nylon Fibres Corp., and Whittaker Fibres, Inc., corporations, and Louis P. Pemstein and Bernard L. Pemstein, individually and as officers of said corporations, and Prescott Textile Co., Inc., a corporation, and Bernard L. Pemstein, 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, 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 textile fiber products; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, textile fiber products, which have been advertised or offered for sale in commerce: or in the connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of textile fiber products, whether 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 failing to maintain records of fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

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.

Dissenting Opinion

IN THE MATTER OF

THE NEW AMERICAN LIBRARY OF
WORLD LITERATURE, INC., ET AL.

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

Docket 5811. Complaint, Sept. 19, 1950—Decision, Jan. 11, 1965

Order modifying an earlier modified order dated Jan. 13, 1955, 51 F.T.C. 583, which prohibited a New York City publisher from issuing abridgements of or retitlings of previously published books without conspicuous notice of such changes on the title page and jacket of the book, by (1) making more explicit the locations where the disclosure must be printed, and (2) excepting from the prohibition any book originally published outside the United States in a language other than English.

DISSENTING OPINION*

By MACINTYRE, *Commissioner*:

I dissent from the action of the Commission in granting the petitions for modification of the orders in these cases, because this step was taken on the basis of data which has not been adequately verified. These modifications substantially relax respondents' obligations to disclose that the titles of their reprints have been changed or that the texts have been abridged. Whatever the merits of the changes, the procedure followed in making them is objectionable. Significant alterations have been made in these orders in reliance on the self-serving statements of respondents on industry conditions and these statements have not been confirmed in the course of public hearings. The only other data available at the Commission bearing on industry conditions pertinent to these modifications, of which I am aware, was secured on the basis of rather informal contacts from a representative of the industry being regulated.

Even if the changes effectuated in these orders were desirable, the procedural precedent afforded by the Majority's action cannot but further erode the Commission's adjudicatory processes. Presumably, when the Commission issues a cease and desist order it believes that the provisions in that order are necessary to prevent recurrence of the unlawful practices documented by the record. This Agency's cease and desist orders are based on formal public proceedings. Such orders should not, therefore, be modified on the basis of respondents'

*Consolidated opinion in two cases: *The New American Library of World Literature, Inc., et al.*, Docket No. 5811 and *A. A. Wyn, Inc., et al.*, Docket No. 6792, p. 19 herein.