

Complaint

IN THE MATTER OF

BENJACK SALES, INC., ET AL.

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

Docket C-896. Complaint, May 12, 1965—Decision, May 12, 1965

Consent order requiring New York distributors of sleeping bags, camping equipment and clothing to retailers for resale, to cease misrepresenting the size of sleeping bags by stating a "cut size" on attached labels larger than the actual size; representing falsely the quality of said products by listing in catalogs and other advertising as, "Gov't duck," "U.S." and "Gov't surplus," and made to government specifications, when in fact such products were not government surplus or made to government specifications; representing falsely the nature of their business by using the legend "manufacturers" on sales invoices;

To cease violating the Textile Fiber Products Identification Act by failing to disclose the fiber content of textile fiber products in advertisements, and using fiber trademarks in advertising textile fiber products in an improper manner.

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 Benjack Sales, Inc., a corporation, and Benjamin Schector and Jack Rubenstein, 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 Benjack Sales, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Said corporation has its office and principal place of business located at 655 Broadway, New York, New York.

Respondents Benjamin Schector and Jack Rubenstein are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Said individual respondents have their office and principal place of business located at 655 Broadway, New York, New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sleeping bags, camping equipment and clothing to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to retailers thereof located in various other States of the United States, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of misrepresenting the size of said products, misrepresenting the quality of said products, and misrepresenting the nature of their business, by various methods and means typical but not all inclusive of which are the following:

1. By attaching or causing to be attached to their said sleeping bags labels stating the "cut size" of the sleeping bags, which "cut size" is larger than the actual size of the bag in question. The term "cut size" when used in the manner alleged above, is confusing and tends to indicate that such a description is the actual size of the finished product. In truth and in fact, this is almost never the case, as the actual size of the finished product is smaller than the size set out on the labels.

2. By listing in their catalogues and other advertising media: "Gov't duck," "U.S.," "U.S.M.C.," and "Gov't surplus," respondents have thereby represented that these products are government surplus, or are made for the United States Government or to government specifications.

In truth and in fact said products are not government surplus and have not been made for the United States Government or to government specifications.

3. By issuing sales invoices which bear the legend "manufacturers" respondents have thereby represented that they own, operate or control manufacturing plants. In truth and in fact, respondents do not own, operate or control any manufacturing plant.

Therefore, the statements and representations and acts and practices set forth above are misleading and deceptive.

PAR. 5. By the aforesaid statements, representations, acts and practices respondents place in the hands of the retailers means and instrumentalities by which they may mislead the public as to the size of said products.

PAR. 6. By the aforesaid statements, representations, acts and practices respondents mislead retailers and the public as to the quality of said products.

PAR. 7. By the aforesaid statements, representations, acts and practices respondents mislead retailers as to the nature of respondents' business.

PAR. 8. In the course and conduct of their said business, and at all times mentioned herein, respondents have been engaged in substantial competition in commerce with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 9. 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. 10. The 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.

PAR. 11. 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. 12. 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 to assist directly or

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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 and implications as to fiber content, but not limited thereto, were the terms "celacloud," "fiber-wool" and "fibertext."

Among such textile fiber products, but not limited thereto, were sleeping bags which were falsely and deceptively advertised by the means of catalogues and window display sheets, and other printed matter distributed by the respondents throughout the United States, in that the true generic names of the fibers contained in such products were not set forth.

PAR. 13. 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 sleeping bags which were falsely and deceptively advertised by means of catalogues, window display sheets, and other printed matter distributed by the respondents throughout the United States in the following respects:

A. The required information as to fiber content was not set forth in the required information 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.

B. Fiber trademarks were used in advertising textile fiber products, mainly sleeping bags, without a full disclosure of the fiber content information required by the Act and Regulations, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

C. Fiber trademarks were used in advertising textile fiber products, mainly sleeping bags, containing more than one fiber and such fiber trademarks did not appear in the required fiber content information in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size and conspicuousness, in violation of Rule 41(b) of the aforesaid Rules and Regulations.

PAR. 14. The aforesaid acts and practices of respondents, as herein alleged, in the aforesaid Paragraphs Eleven, Twelve and Thirteen,

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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 to 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.

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 Benjack Sales, 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 655 Broadway, in the city of New York, State of New York.

Respondents Benjamin Schector and Jack Rubenstein 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 Benjack Sales, Inc., a corporation and its officers and Benjamin Schector and Jack Rubenstein, 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 manufacture, offering for sale, sale or distribution of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, labeling, representing in a catalogue or otherwise representing the "cut size," or dimensions of material used in the construction of sleeping bags or other products, unless such representations are accompanied by a description of the finished or actual size, with the latter description being given at least equal prominence.

2. Misrepresenting the size of sleeping bags or other products on labels or in any other manner.

3. Furnishing to others any means or instrumentalities by which they may mislead the public as to the size of sleeping bags or other products.

4. Representing directly or by implication by means of terms such as "Gov't duck," "U.S.," "U.S.M.C.," or any other method that musette bags, duffel bags, gas cans, water cans and other products are United States Government surplus when in truth and fact such products are not United States Government surplus.

5. Representing directly or by implication, that musette bags, duffel bags, gas cans, water cans, and other products are made to United States Government specifications, when in truth and in fact such products have not been made to United States Government specifications.

6. Misrepresenting in any manner that the respondents are manufacturers or own, operate or control the plants in which their products are made.

It is further ordered, That respondents Benjack Sales, Inc., a corporation, and its officers and Benjamin Schector and Jack Rubenstein 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, de-

livery 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 products" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from 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 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. Failing to separately set forth the information as to fiber content in the required fiber content disclosure 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.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the fiber content information required by the Act and Regulations.

4. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

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.

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IN THE MATTER OF

TOY MERCHANDISING CORP. ET AL.

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

Docket C-897. Complaint, May 13, 1965—Decision, May 13, 1965

Consent order requiring a New York City corporation engaged in selling toys through individual distributors who service "toy routes," to cease misrepresenting the quality and origin of its toys, and making deceptive earnings, location, routes and other claims to promote its distributorships.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Toy Merchandising Corp., a corporation, and Fred Holm and Tim Johnson, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said 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 Toy Merchandising Corp. 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 34-10 58th Street, Woodside 77, Queens, New York.

Respondents Fred Holm and Tim Johnson are officers of the corporate respondent. They formulate, direct, and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of toys and toy shops to distributors for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.