

Complaint

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It is further ordered, That the complaint be, and it hereby is, dismissed.

Commissioner Dixon dissenting, and Commissioner MacIntyre not participating.

IN THE MATTER OF
DANA IMPORTING CO. DOING BUSINESS AS
DANA INCORPORATED, 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-924. Complaint, July 30, 1965—Decision, July 30, 1965

Consent order requiring a San Francisco, Calif., importer and distributor of textile fiber products, to cease falsely labeling, invoicing and advertising the fiber content of textile fiber products in violation of the Textile Fiber Products Identification Act by such practice as labeling certain textile products as 100% Polyester which contained substantially different fibers, and to cease misrepresenting the nature and locations of its business.

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 Dana Importing Co. a corporation doing business as Dana Incorporated, and Paul J. Tarnavsky, Alexander N. Gubert, and Joseph C. Choy, 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 Dana Importing Co., is a corporation doing business as Dana Incorporated, organized, existing and doing business under and by virtue of the laws of the State of California. Said corporation is an importer and distributor of textile fiber products with its office and principal place of business located at 33 Berry Street, San Francisco, California.

Respondents Paul J. Tarnavsky, Alexander N. Gubert, and Joseph C. Choy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices complained of herein. Said individual respondents have their office and principal place of business located at 33 Berry Street, San Francisco, California.

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, 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 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 100% Polyester, whereas, in truth and in fact, said product contained a substantially different fiber.

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 Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed to disclose the true generic name of the fiber present.

PAR. 5. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business respondents now cause, and for sometime last past have caused their products when sold to be shipped from their place of business in the State of California to retailers 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 of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of misrepresenting the nature of their business, by stating in price lists, which are distributed to their customers, that the shirts sold by them are manufactured in their own factory by the use of statements such as "precision manufactured by our own factory in the British Crown Colony of Hong Kong; expertly tailored in the best, incomparable English tradition!" and by issuing sales invoices which bear the legend "manufacturers" thereby representing that they own, operate or control manufacturing plants. In truth and in fact, respondents do not own, operate or control any manufacturing plants in the Crown Colony of Hong Kong or anywhere else, nor do they maintain a place of business in Hong Kong. Therefore, the statements and representations and acts and practices set forth above are misleading and deceptive.

PAR. 8. Many dealers and other purchasers prefer to buy products, including textile products, directly from factories or mills, believing that by doing so they obtain lower prices and other advantages.

PAR. 9. 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 textile products of the same general kind and nature as so sold by respondents.

PAR. 10. 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 dealers and other purchasers into an erroneous and mistaken belief as to the nature of respondents' business and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. 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.

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 Dana Importing Co. is a corporation doing business as Dana Incorporated, organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 33 Berry Street, in the city of San Francisco, State of California.

Respondents Paul J. Tarnavsky, Alexander N. Gubert, and Joseph C. Choy 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 Dana Importing Co., a corporation, doing business as Dana Incorporated, or under any other name or names, and its officers, and Paul J. Tarnavsky, Alexander N. Gubert, and Joseph C. Choy, individually and as officers of said

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corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing, delivering for introduction, selling, advertising, or offering for sale, in commerce, or transporting or causing to be transported in commerce, or importing into the United States any textile fiber product; or selling, offering for sale, advertising, delivering, transporting or causing to be transported, any textile fiber product, which has been advertised or offered for sale in commerce; or selling, offering for sale, advertising, delivering, transporting, or causing to be transported, after shipment in commerce, 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:

1. Which is falsely or deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.
2. Unless each such product has securely affixed thereto, or placed thereon, a stamp, tag, label or other means of identification correctly showing in a clear and conspicuous manner 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 Dana Importing Co., a corporation, doing business as Dana Incorporated, or under any other name or names and its officers, and Paul J. Tarnavsky, Alexander N. Gubert, and Joseph C. Choy, individually and as officers of the 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that respondents are manufacturers, unless respondents own and operate, or directly and absolutely control a factory or manufacturing plant wherein their products are made.
2. Representing in any manner that respondents have a place of business in the Crown Colony of Hong Kong or misrepresenting in any manner the locations where the respondents have places of business.

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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.
