

Complaint

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IN THE MATTER OF

MIDWEST HOSIERY INCORPORATED, ET AL. formerly
known as MIDWEST HOSIERY MILLS, INC.

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

Docket 8676. Complaint, Dec. 22, 1965—Decision, June 16, 1966*

Order requiring a Chicago, Ill., wholesaler of men's and children's hosiery to cease misbranding, falsely labeling, and failing to disclose the true quality of its products, and stop misrepresenting itself as a manufacturer.

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 Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc., a corporation, Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc., as a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1223 South Halsted Street, Chicago, Illinois.

Individual respondents Sidney Leibowitz, Solomon Kopman and Ann Gruber are respectively president, vice president and secretary of the corporate respondent, and formulate, direct, and control the acts, practices, and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are wholesalers of men's and children's textile fiber socks.

PAR. 2. Subsequent to the effective date of the Textile Fiber

*Reported as amended by hearing examiner's order of February 23, 1966, by substituting "Midwest Hosiery Incorporated, formerly known as Midwest Hosiery Mills, Inc.," for the designation "Midwest Hosiery Mills, Inc."

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 in the importation into the United States, of textile fiber products including men's and children's hosiery; 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 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 under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's and children's hosiery, without labels and with labels which failed:

1. To disclose the constituent fiber or combination of fibers in the textile fiber product;
2. To disclose the percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;
3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturers of the product or one or more persons subject to Section 3 with respect to such product.

PAR. 4. Certain of said textile fiber products were 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:

1. All parts of the required information were not conspicuously and separately set out on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

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2. Non-required information and representations were placed on the label or elsewhere on the product and were set forth in such a manner as to interfere with, minimize, detract from, and conflict with required information, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

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 methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their business, respondents purchase hosiery which is imperfect. They cause such hosiery to be sorted, with respect to color and size, and to be bundled into selling units of several pairs to the bundle, and then sell such hosiery to other wholesalers, and to retailers who in turn sell it to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection.

PAR. 7. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, including hosiery, when sold, to be shipped from their place of business in the State of Illinois 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.

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

PAR. 9. Respondents did not mark their said hosiery products in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products, and into the pur-

chase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated August 30, 1960 (amended June 10, 1964).

PAR. 10. Respondents in selling their hosiery as aforesaid have labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondents' practice of labeling their packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. In the course and conduct of their business, the aforesaid respondents, on their invoices, refer to the corporate respondent as "Midwest Hosiery Mills, Inc.," thus stating or implying that said corporate respondent is a manufacturer of the hosiery which it sells. In truth and in fact, the corporate respondent performs no manufacturing functions whatever, but operates exclusively as a wholesaler of said products. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 12. There is a preference on the part of many members of the public to deal directly with a manufacturer, including the manufacturer of clothing, in the belief that by doing so, certain advantages accrue, including better prices.

PAR. 13. The use by such 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 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 belief.

PAR. 14. 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

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now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5(a)(1) of the Federal Trade Commission Act.

Mr. Thomas J. Kerwan and Mr. Thomas C. Marshall supporting the complaint.

Freeman, Freeman & Haas, by *Mr. Harry Freeman*, Chicago, Ill., for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

MAY 9, 1966

This proceeding was commenced by the issuance of a complaint on December 22, 1965 charging the corporate respondent and the three named individual respondents, individually, and as officers of said corporation with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of Section 5 of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated thereunder, by misbranding, falsely labeling and failing to disclose the true quality of men's and children's hosiery it sells, and misrepresenting that it is a manufacturer.

After being served with the said complaint, the aforesaid respondents appeared by counsel and on January 19, 1966 filed their answer admitting a number of the specific allegations in the complaint, but denying generally the illegality of the practices set forth in the complaint.

By order dated February 2, 1966, the hearing examiner scheduled a prehearing conference in this matter for April 25, 1966 at Chicago, Illinois, with the initial hearing to commence the following day on April 26, 1966 in the same city.

By motion of complaint counsel dated March 22, 1966, the hearing examiner was requested to certify to the Commission the necessity of holding hearings in more than one place in conformity with the provisions of Section 3.16(d) of the Commission's Rules. The places requested for the proposed hearings were Atlanta, Georgia; Chattanooga, Tennessee; Washington, D.C.; and Chicago, Illinois.

The hearing examiner issued a Certificate of Necessity March 23, 1966, and by order dated March 28, 1966, the Commission granted leave to hold hearings in the above-mentioned places.

By order dated April 8, 1966, the hearing examiner rescheduled hearings in Atlanta, Georgia, April 25, 1966; Chattanooga, Ten-

nesse, April 27, 1966; Washington, D.C., April 29, 1966, and Chicago, Illinois, May 2, 1966.

By motion dated April 19, 1966, complaint counsel advised the hearing examiner that the parties had entered into a stipulation of facts making the hearings in Atlanta, Chattanooga and Washington, D.C. unnecessary, and requested that the hearings in those cities be cancelled and a hearing be rescheduled for Chicago, Illinois, on April 25, 1966.

By order dated April 19, 1966, the hearings in Atlanta, Chattanooga and Washington, D.C. were cancelled and the initial hearing was rescheduled for April 25, 1966 in Chicago, Illinois.

On April 25, 1966, the initial hearing was held in Chicago, Illinois, at which time the hearing examiner accepted a stipulation of facts entered into by the parties which was made a part of the record and identified as CX 92. Certain physical exhibits and documents identified as CX 1—CX 91 inclusive, were also made a part of the record in this proceeding. After the complaint counsel rested his case, counsel for respondents was granted the opportunity to present evidence and to call witnesses. Respondents' counsel declined and no evidence was adduced on behalf of the respondents. The hearing examiner thereupon ordered that the record be closed for the taking of testimony and reception of evidence.

Based upon the entire record consisting of the complaint, answer, stipulation of facts, exhibits, and other matters of record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom, and order. All findings not otherwise referenced are to be found in the stipulation of facts entered into by the parties.

FINDINGS OF FACT

1. Respondent Midwest Hosiery Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1223 South Halsted Street, Chicago, Illinois. Individual respondents Sidney Leibowitz, Solomon Kopman and Ann Gruber are respectively president, vice president and secretary of the corporate respondent, and formulate, direct, and control the acts, practices, and policies of the corporate respondent, including the acts and practices complained of herein. Their business addresses are the same as said corporate respondent. Respondents are wholesalers of textile fiber products, namely men's and children's socks.

2. For at least five years prior to September 17, 1965, corporate respondent Midwest Hosiery Incorporated did business under the name and style of Midwest Hosiery Mills, Inc., but on the aforementioned date had its corporate charter amended to reflect the change of its name to Midwest Hosiery Incorporated. Midwest Hosiery Incorporated is not, and was not during the aforesaid period, a manufacturer of men's and children's hosiery or of any other product.

3. Commission Exhibits 35 through 38, in their present form as to packaging and labeling, which were "hosiery seconds" and other hosiery seconds similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Read Drug Stores in Baltimore, Maryland, under invoices identified as CX-41, CX-42 and CX-43.

4. Commission Exhibits 39 and 40, in their present form as to packaging and labeling, which were "hosiery seconds," and other hosiery seconds similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Read Drug Stores, Baltimore, Maryland, under invoices identified as CX-45 and CX-46, and that CX-39 and CX-40 were sold at retail as evidence by CX-44.

5. Commission Exhibits 9 and 11, in their present form as to packaging and labeling, which were hosiery "seconds" and other "Hosiery seconds" similarly packaged and labeled, were sold and shipped by Midwest Hosiery Incorporated to Eleventh Avenue Pharmacy in Gary, Indiana, under invoices identified as CX-10 and CX-12.

6. Commission Exhibit 11 which is composed of hosiery classified as "seconds" was prepared, packaged, and labeled by Ed Manz Hosiery Company of Chattanooga, Tennessee, for Midwest Hosiery Incorporated and shipped by said Ed Manz Company to Midwest Hosiery Incorporated in Chicago, Illinois, (as affirmed in Ed Manz' affidavit) and thereafter shipped by Midwest to the Eleventh Avenue Pharmacy in Gary, Indiana, as per invoice identified as CX-12.

7. Commission Exhibits 1, 3, 5 and 7, which were composed of hosiery products classified as "seconds" were received in commerce by Midwest Hosiery Incorporated. The respective invoices relating thereto were identified as CX-2, CX-4, CX-6 and CX-8, and hosiery "seconds" packaged and labeled in the manner of CX-1, CX-3, CX-5 and CX-7 were sold in commerce by Midwest Hosiery Incorporated.

8. 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 in the importation into the United States, of textile fiber products including men's and children's hosiery; 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.

9. Certain of said textile fiber products were 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 under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely, men's and children's hosiery, without labels and with labels which failed:

1. To disclose the constituent fiber or combination of fibers in the textile fiber product;
2. To disclose the percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content;
3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturers of the product or one or more persons subject to Section 3 with respect to such product.

10. Certain of said textile fiber products were 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:

1. All parts of the required information were not conspicuously and separately set out on the same side of the label in such a manner as to be clearly legible and readily accessible to the

prospective purchaser, in violation of Rule 16(b) of the aforesaid Rules and Regulations.

2. Non-required information and representations were placed on the label or elsewhere on the product and were set forth in such a manner as to interfere with, minimize, detract from, and conflict with required information, in violation of Rule 16(c) of the aforesaid Rules and Regulations.

11. In the course and conduct of their business, respondents purchase hosiery which is imperfect. In some instances respondents sort such hosiery with respect to color and size, and bundle such hosiery into selling units of several pairs to the bundle. The remainder of respondents' hosiery products are packaged and bundled into selling units of several pairs to the bundle by respondents' suppliers who ship such products to respondents' place of business for resale or drop-ship such products to respondents' customers after the sale of such products is effected by respondents. Respondents sell such hosiery to other wholesalers, and to retailers who in turn sell it to the purchasing public. Such hosiery products are known in the trade as "irregulars," "seconds," or "thirds" depending upon the nature of the imperfection.

12. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, including hosiery, when sold, to be shipped from their place of business in the State of Illinois 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.

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

14. Respondents' hosiery products were not marked in a clear, conspicuous manner to disclose that they were "irregulars" or "seconds," so as to inform purchasers thereof of their imperfect quality when sold by respondents and shipped in commerce. The purchasing public in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. The failure to mark or label the said products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing

public into the erroneous and mistaken belief that said products are perfect quality products, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

15. Certain of respondents' hosiery products, as described in Finding No. 14 above, were labeled as "First in quality," thereby representing that said hosiery is of first quality when sold by respondents and shipped in commerce. The practice of labeling such packaged hosiery as "First in quality" has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

16. In the course and conduct of their business, the aforesaid respondents, on their invoices, refer to the corporate respondent as "Midwest Hosiery Mills, Inc." thus stating or implying that said corporate respondent is a manufacturer of the hosiery which it sells. In truth and in fact, the corporate respondent performs no manufacturing functions whatever, but operates exclusively as a wholesaler of said products. There is a preference on the part of many members of the public to deal directly with a manufacturer, including the manufacturer of clothing, in the belief that by doing so, certain advantages accrue, including better prices. Thus the aforesaid representation is false, misleading and deceptive.

17. The use by such 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 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 belief.

CONCLUSIONS

1. The aforesaid acts and practices of respondents, as herein found, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act, the Textile Fiber Products Identifi-

cation Act, and the Rules and Regulations promulgated thereunder.

2. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

3. The complaint herein states a cause of action and this proceeding is in the public interest.

The order as hereinafter set forth follows the form of the order contained in the complaint and is also the order stipulated to by the parties. After due consideration, the hearing examiner agrees that such order is appropriate and may be entered.

ORDER

It is ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, 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, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or in 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 misbranding textile fiber products:

A. By 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.

B. By failing to set forth all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

C. By setting forth nonrequired information or representations on the label or elsewhere on the product in such a manner as to minimize, detract from, or conflict with information

required by the said Act and the Rules and Regulations promulgated thereunder.

It is further ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking thereon the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "First in quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

It is further ordered, That respondents Midwest Hosiery Incorporated, a corporation, and its officers, and Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or other textile products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that the respondents are manufacturers of hosiery or other textile products unless respondents own and operate, or directly and absolutely

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control a mill, factory or manufacturing plant wherein said hosiery or other textile products are manufactured.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 16th day of June 1966, become the decision of the Commission.

It is further ordered, That respondents, Midwest Hosiery Incorporated, a corporation, Sidney Leibowitz, Solomon Kopman, and Ann Gruber, individually and as officers of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.
