

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.

IN THE MATTER OF

CLAUDE E. SPIVEY TRADING AS EAST TENNESSEE
HOSIERY COMPANY

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

Docket C-1085. Complaint, July 11, 1966—Decision, July 11, 1966

Consent order requiring a Chattanooga, Tenn., finisher and wholesaler of men's and children's hosiery to cease misbranding his products, failing to disclose their true quality, and misrepresenting imperfect hosiery as first quality.

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

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Commission, having reason to believe that Claude E. Spivey, an individual trading as East Tennessee Hosiery Company, hereinafter referred to as respondent, has 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 Claude E. Spivey is an individual trading as East Tennessee Hosiery Company with his office and principal place of business located at 1270 Market Street, Chattanooga, Tennessee.

Respondent is a finisher and wholesaler of men's and children's hosiery.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has been and is 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 has 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 has 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 respondent 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, which were not labeled to show:

1. The constituent fiber or combination of fibers in the textile fiber product;
2. The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamenta-

tion not exceeding 5 per centum by weight of the total fiber content;

3. 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 with respect to such product.

PAR. 4. The acts and practices of respondent 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. 5. In the course and conduct of his business, respondent purchases hosiery which is imperfect and causes such hosiery to be repaired and finished. In certain instances respondent causes 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 sells such hosiery to wholesalers and to retailers who in turn sell it to the purchasing public. In other instances such hosiery, after repairing and finishing, is sold by respondent to dealers who sort and bundle the hosiery and in turn sell such hosiery to wholesalers and retailers for resale 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. 6. In the course and conduct of his business, respondent now causes, and for some time last past has caused his said products, including hosiery, when sold, to be shipped from his place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. In the conduct of his business, at all times mentioned herein, respondent has 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 respondent.

PAR. 8. Respondent does not mark his said hosiery products in a clear, conspicuous manner to disclose that they are "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. Respondent's failure to mark or label his 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 respondent's 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. 9. Respondent in selling his hosiery as aforesaid has labeled certain of said packaged hosiery as "First in quality," thereby representing that said hosiery is of first quality. Respondent's 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 10. The use by such respondent of the aforesaid false, misleading and deceptive 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and 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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the

caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated the said Acts, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Claude E. Spivey is an individual trading as East Tennessee Hosiery Company, with his office and principal place of business located at 1270 Market Street, Chattanooga, Tennessee.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Claude E. Spivey, an individual trading as East Tennessee Hosiery Company or under any other name, and respondent's 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 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 con-

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tained 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 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;

It is further ordered, That respondent Claude E. Spivey, an individual trading as East Tennessee Hosiery Company or under any other name, and respondent's 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 on each stocking, sock or other unit 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 a 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 the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Complaint

IN THE MATTER OF

NORMAN DIAMOND TRADING AS CARPETLAND U.S.A., ETC.

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

Docket C-1086. Complaint, July 15, 1966—Decision, July 15, 1966

Consent order requiring a Philadelphia retailer of carpeting to cease falsely advertising, deceptively guaranteeing, and misbranding his 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 Norman Diamond, an individual trading as Carpetland U.S.A. and House Beautiful and formerly a copartner with Martin Korsh trading as Carpetland U.S.A. and House Beautiful, hereinafter referred to as respondent, has 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 Norman Diamond is an individual trading as Carpetland U.S.A. and House Beautiful. He formerly traded under said trade names as a copartner with Martin Korsh, not named as a respondent in this proceeding.

Respondent Norman Diamond is a retailer of floor coverings. His office and principal place of business is located at 5204 Lancaster Avenue, Philadelphia 31, Pennsylvania. The office and principal place of business of the said former partnership also was located at that address. The acts and practices challenged hereinafter were engaged in by respondent Norman Diamond during the period when such business was operated as a partnership.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondent has