

MICHAEL M. TURIN*

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

Docket 8757. Complaint, Feb. 28, 1968—Decision Apr. 11, 1969

Consent order requiring a Costa Mesa, Calif., retailer of fabrics to cease misbranding its textile fiber products by failing to disclose on labels when the fabrics are "remnants of undetermined fiber content."

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

*Formerly trading as International Yardage Fair.

Complaint

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Trade Commission, having reason to believe that Michael M. Turin, an individual formerly trading as International Yardage Fair, hereinafter referred to as the respondent, has 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 Michael M. Turin is an individual who formerly traded under the name of International Yardage Fair until October 1966.

Respondent Michael M. Turin established and formulated the policies of International Yardage Fair, and directed its operation, until October 1966, at which time he discontinued trading under the name of International Yardage Fair.

Respondent Michael M. Turin, while trading under the name of International Yardage Fair, engaged in the business of retailing fabrics, specializing in the sale of 3 to 10 yard pre-cut lengths and remnants. Respondent Michael M. Turin, up until October 1966, had his office and principal place of business at 3006 Country Club Drive, Costa Mesa, California.

Respondent Michael M. Turin ceased trading as International Yardage Fair in October 1966, and became associated with Round the World Commodities, a proprietorship formed and owned by Clint Pigman. Round the World Commodities was organized in October 1966 and is engaged in the same business as International Yardage Fair formerly was. Respondent Michael M. Turin, as an associate of, and consultant to, Clint Pigman, performs the same functions as those performed by him while operating International Yardage Fair. These include the promoting of fabric shows, arranging publicity in advertising, setting up itineraries, and assisting in the buying of fabrics.

The address of the office and principal place of business of Round the World Commodities is Post Office Box 1252, Costa Mesa, California. Its warehouse is located at 1245 Logan Street, Costa Mesa, California.

PAR. 2. Respondent, is now and for some time last past has been engaged in the introduction, delivery for sale, 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 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 within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, 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 which were advertised in the Daily Pilot/News-Press, a newspaper published in Newport Beach, California, and distributed in interstate commerce. The said advertisement contains terms which represented, either directly or by implication, that certain fibers were present in the said product, when such was not the case.

Among such terms, but not limited thereto, was the term "LINENS," which was used to describe a textile fiber product which in truth and in fact was made of rayon and was not composed of linen nor did it contain any linen fibers.

PAR. 4. 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 prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible: (1) the true generic names of the constituent fibers present in the textile fiber products; (2) the percentage of each such fiber; and (3) any fiber or group of fibers present in the amount of 5 per centum or less as "other fiber" or "other fibers."

PAR. 5. Certain of said textile fiber products were falsely and deceptively advertised, in that the respondent, in making disclosure or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote

and assist, directly or 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 such textile fiber products, but not limited thereto, were fabrics which were falsely and deceptively advertised in the Los Angeles Times, a newspaper published in Los Angeles, California, and distributed in interstate commerce, in that the trade name of the fiber was used in lieu of the true generic name of the fibers in such articles.

PAR. 6. Respondent, in violation of Section 5(a) of the Textile Fiber Products Identification Act, has caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 7. Respondent, in substituting a stamp, tag, label or other identification pursuant to Section 5(b) has not kept such records as would show the information set forth on the stamp, tag, label or other identification that was removed, and the name or names of the person or persons from whom such textile fiber product was received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

PAR. 8. The acts and practices of the 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. 9. Respondent is now, and for some time last past has been, engaged in the offering for sale, sale and distribution of textile fabrics to the public.

PAR. 10. In the course and conduct of his aforesaid business, respondent has caused advertisements, intended to induce the sale of his aforesaid textile fabrics, to be placed in newspapers which were and are disseminated in interstate circulation. Among and typical, but not all inclusive of such statements, are the following:

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THE WORLD'S LARGEST DISPLAY OF MATERIALS.

Over 4,000 sq. ft. Jam-packed with material from "Around the world"

* * * * *

World's Largest display and sale

Over 32,000 sq. ft. of display space never before have so many fabrics been displayed and sold under one roof.

Materials from "Around the World"

Japan France England India
Switzerland Hong Kong Germany
and many many others

* * * * *

Largest
Display of
Materials
in the World!!!

1/2 million yards of sample cuts and bolts made for manufacturers of clothing!!!

Yard goods—drapery fabrics
upholstery materials
Plastics Boltflex
Naugahyde
and others.

* * * * *

ALL FIRST
QUALITY
and
GUARANTEED!
No Limit—No Reserve

PAR. 11. By and through the use of said statements, and others of similar import not specifically set out herein, respondent represented, directly or by implication:

1. That the respondent operated the largest display room and had for sale the largest display of textile fabrics in the world.
2. That all of the textile fabrics displayed and sold by him were of first quality.
3. That the respondent's textile fabrics were unconditionally guaranteed.

PAR. 12. In truth and in fact:

1. Respondent did not operate the largest display room in the world.
2. Respondent has not had, and does not have, the largest display of fabric in the world.

3. Many of the textile fabrics displayed and sold by him were seconds and were not of first quality.

4. Respondent's guarantee was not unconditional and the guarantor failed to set forth the nature and extent of the guarantee, and the manner in which the guarantor would perform.

Therefore, the statements and representations set forth in Paragraph Ten were and are false, misleading, and deceptive.

PAR. 13. 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 textile fabrics of the same general kind and nature as those sold by respondent.

PAR. 14. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 15. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Edward B. Finch and *Mr. Richard H. Gins* for the Commission.

Mr. Donald W. Killian, Jr., and *Mr. Blair T. Barnett*, Newport Beach, Calif., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER
JANUARY 9, 1969

In the complaint, which was issued on February 28, 1968, the respondent is charged with violating provisions of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, and the Rules and Regulations promulgated under the latter Act. On April 1, 1968, complaint counsel and counsel for respondent participated with the hearing examiner in a telephonic conference, and an order was issued reciting the results thereof. The order contained a directive to each party to prepare a trial

brief setting forth a statement of anticipated issues and disclosing, among other things, the names of the witnesses and the documentary exhibits which the party plans to introduce. Complaint counsel's brief was submitted on May 6, 1968, and the respondent's brief on May 21, 1968.

A hearing, convened on June 10, 1968, was adjourned, to be reset on ten days' notice, on motion of respondent's counsel and a showing that the respondent had undergone surgery four days prior thereto and would be hospitalized for a period of time. Hearings were held and completed at Los Angeles, California, on September 24 and 25, 1968, and the record was closed for the receipt of evidence. Proposed findings were to be filed on or before November 8, and replies thereto on November 22, 1968.

Complaint counsel, on November 8, 1968, filed with the Secretary of the Commission proposed findings. The respondent, who is located at Costa Mesa, California, by a letter dated November 8, 1968, addressed to the hearing examiner, stated in part:

When I found out what the approximate cost of obtaining a transcript of the proceedings would be, not to mention additional attorney's fees, I discovered that I could not financially afford to carry the fight any longer and I told my attorney not to do any more work on the case.

The main reason I am writing this letter is to let you know that the fact that I am not filing Findings is not due to the fact that I have no interest in the matter, but simply due to the fact that I couldn't afford to.

However, on November 25, 1968, the hearing examiner received from the respondent a document, which was mailed on November 21, 1968, entitled "Proposed Finding of Fact, Conclusions of Law and Order," described by him as "a layman's attempt to submit finding of facts," without a copy of the transcript, and attempting "to follow attorney's [complaint counsel's] Proposed Findings as a guide." The hearing examiner caused the said document to be filed with the Secretary of the Commission, together with the required number of copies, as provided by the rules of the Commission, and an order was issued receiving the same as part of the record in this proceeding. It was further ordered that complaint counsel be allowed to file a reply thereto on or before December 6, 1968, and such reply was filed on said date.

The hearing examiner has given consideration to the proposed findings filed by the parties, and all proposed findings and conclusions not hereinafter specifically found or concluded are herewith rejected. Upon consideration of the entire record herein, the

hearing examiner makes the following findings of fact and conclusions:

The respondent, Michael M. Turin, residing at 3006 Country Club Drive, Costa Mesa, California, has been in the business of buying and selling fabrics since the year 1962. Some time during that year or in 1963, he formed a partnership with Mrs. Bertha Goldstein, doing business under the name of International Yardage Fair. However, the record herein shows that he held himself out as the sole owner of the said company. He continued to do business as International Yardage Fair until October 1964 when he was forced into bankruptcy by his creditors with liabilities of about \$330,000 or \$340,000. The creditors received nothing. During the last full year of the business, the gross sales totaled approximately \$550,000. In 1965, the respondent was employed by Mr. Clint Pigman as general manager of a fabric business started that year under the name of Round the World Commodities. The office and principal place of business of the company is 2226 South Susan Street, Santa Ana, California, or Post Office Box 1252, Costa Mesa, California. The gross sales of the business for the year 1967 were \$350,000, and for the year 1968 they may total \$600,000. As general manager of Round the World Commodities, the respondent formulates all of the policies thereof and performs the same functions as he did while he operated International Yardage Fair (Tr. 150-154, 190-192).

Respondent is now, and for some time last past has been, engaged in the introduction, delivery for sale, 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 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. Two of Complaint admitted by Answer).

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 textile

fabrics of the same general kind and nature as those sold by respondent (Par. Thirteen of Complaint admitted by Answer).

The complaint alleges that respondent, Michael M. Turin, has violated:

(1) Section 4(a) of the Textile Fiber Products Identification Act, in that textile fiber products were falsely and deceptively stamped, tagged, labeled, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein;

(2) Section 4(b) of said Act, by failing to stamp, tag, label, or otherwise identify the aforementioned textile fiber products with labels showing the information required by said Section 4(b), and in the manner and form prescribed by the Rules and Regulations under said Act;

(3) Section 4(c) of said Act, by failing to set forth in advertising the required information as to fiber content, and in the manner and form prescribed by the Rules and Regulations under said Act;

(4) Section 5(a) of said Act, by removing labels from textile fiber products required by the Act to be affixed to said products, without substituting therefor labels conforming to Section 4 and in the manner prescribed by Section 5(b);

(5) Section 6(b) of said Act, by failing to keep required records when substituting stamps, tags, labels or other identification pursuant to Section 5(b);

(6) Section 5 of the Federal Trade Commission Act by falsely and deceptively advertising, in newspapers of interstate circulation, that

(a) the respondent's operation was "The World's Largest Display of Materials," "World's Largest display and sale," "Largest Display of Materials in the World!!!";

(b) that the fabrics offered for sale were "ALL FIRST QUALITY";

(c) that the respondent's fabrics were unconditionally guaranteed.

In support of the complaint, complaint counsel called as witnesses six employees of the Federal Trade Commission, namely, Miss Idelle Shapiro, head technologist at the textile and furs laboratory, Bureau of Textiles and Furs, Washington, D.C., and the following investigators for the Commission: Mr. Edwin H. Anderson, at present in the New York City Office, formerly in the Los Angeles Office; Mr. Carl B. Mickelson, Los Angeles Of-

fice; Mr. Jackson R. Smith, Los Angeles Office; Mr. Kerper G. Propert, San Francisco Office; and Mr. Donald L. Hamilton, Seattle Office. Also called as witnesses by complaint counsel were Mr. Ben Rosenberg, of Los Angeles, engaged in a business called a cutting service; Mr. Richard Mangam, advertising salesman for the Los Angeles Times; and the respondent, Mr. Michael M. Turin. No witnesses were called by the respondent, and the facts in connection with his defense were developed by cross-examination of the respondent at the time he was called as a witness in support of the complaint.

In carrying on their business of making retail sales, International Yardage Fair and Round the World Commodities did not have regular outlets, but they staged so-called shows in banquet rooms, fairgrounds, exposition halls, and the like located in many cities throughout California. The record also shows that Round the World Commodities conducted two sales at Seattle, Washington, one in 1967 and the other in 1968. Each show would usually run from one to five days, and would be prominently advertised in the local newspapers. There were received in evidence 32 advertisements that appeared in newspapers with respect to 23 sales, all in the State of California, 11 of which were conducted by International Yardage Fair during the years of 1963 and 1964, one in June 1965 where the seller is not revealed, and 11 by Round the World Commodities during 1965, 1966, and 1967. The places and dates, together with the exhibit numbers, with respect to each sale are as follows:

Place of sale	Date	Ad
INTERNATIONAL YARDAGE FAIR		
1. Hollywood Roosevelt Hotel Hollywood	Sept. 5-6, 1963	CX 1.
2. Lafayette Hotel Long Beach	Sept. 20-21-22-23, 1963	CX 2.
3. Ambassador Hotel Los Angeles	Oct. 22-23-24, 1963	CX 3.
4. Sheraton Palace Hotel San Francisco	Nov. 10-11-12, 1963	CX 18.
5. Los Angeles County Fairgrounds Pomona	Nov. 20-21, 1963	CX 4.
6. Sheraton Palace Hotel San Francisco	Jan. 3-4-5-6, 1964	CX 17.
7. Shrine Exposition Hall Los Angeles	April 30 thru May 9, 1964 (10 days)	CX 5, 6, 7, 8, 9, 10.
8. Orange County Fairgrounds Costa Mesa	May 15-16-17-18, 1964	CX 11, 12, 13.
9. Orange Show Grounds San Bernardino	May 22-23-24-25, 1964	CX 34.
10. American Legion Hall Vista	July 29-30-31, 1964	CX 16.
11. Ambassador Hotel Los Angeles	Aug. 28-29-30-31, 1964	CX 23.

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SELLER NOT DISCLOSED

Place of sale	Date	Ad
12. American Legion Hall Vista	June 17-18, 1965	CX 19, 20.

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13. Mayfair Hotel Los Angeles	Aug. 19-20, 1965	CX 24.
14. Mayfair Hotel Los Angeles	Aug. 23-24, 1965	CX 25.
15. Shrine Exposition Hall Los Angeles	Oct. 22-23-24-25, 1965	CX 26.
16. Union Hall, Azusa	May 2-3-4, 1966	CX 21.
17. Disneyland Hotel Anaheim	July 26-27, 1966	CX 22.
18. Union Hall, Azusa	Aug. 17-18-19, 1966	CX 28, 30.
19. Biltmore Hotel Los Angeles	Sept. 8-9-10-11, 1966	CX 31.
20. Hacienda Hotel El Segundo	Sept. 20-21-22-23, 1966	CX 27.
21. Biltmore Hotel Los Angeles	Dec. 4-5, 1966	CX 29.
22. Beverly Hilton Hotel Beverly Hills	March 16, 1967	CX 33.
23. Hollywood Palladium Hollywood	Aug. 31, 1967	CX 32.

Two pieces of fabrics (CX 14 and 15) purchased from the respondent by Mr. Anderson on May 15, 1964, at the sale conducted at the Orange County Fairgrounds, Costa Mesa (Sale No. 8) and the analysis reports, dated May 1, 1968, made by Miss Shapiro with respect to the fiber content of said fabrics (CX 62 and 63) were received in evidence.

Invoices representing sales made to International during February through May 1964 by three suppliers (CX 35 through CX 61), which were obtained by Mr. Mickelson from respondent on June 29, 1964, a sign measuring 22 x 14 inches, with letters less than two inches in height, reading, "ALL MATERIALS ON DISPLAY THAT ARE NOT MARKED WITH THE FIBER CONTENT ARE TO BE REGARDED AS REMNANTS OF UNDETERMINED FIBER CONTENT," supplied by the respondent to Mr. Hamilton on August 10, 1967 (CX 64), and a license issued by the city of Costa Mesa, California, to the respondent to conduct a sale on April 30 through May 3, 1965 on the payment of a \$40 fee (CX 65A-B) were received in evidence.

Mr. Anderson testified that in the course of his duties he observed an ad, as he recalled it, in the Los Angeles Times relating to a promotion being held in the banquet room of the Ambassador Hotel, Los Angeles, which he attended. He did not disclose the date of the sale, but an ad in the Los Angeles Herald-Examiner on October 20, 1963, obtained by Mr. Anderson, shows that a promotion took place on October 22, 23, and 24, 1963 (CX 3). He looked at the merchandise on display, picking up a

number of pieces of fabrics, most of which were not labeled as to fiber content. The fabrics "did have some kind of a tag disclosing the length of the pieces of fabric and the selling price and I just did a little looking" (Tr. 66). He contacted a Mr. Showers, who appeared to be in charge, and had a brief discussion with him about a sign approximately 2 x 2 1/2 feet in size, worded:

All materials in this showing are sample sets or bolts sent to the manufacturers of fine clothing for their consideration and or use. Wherever possible fiber count in each piece will be shown. Wherever it is not shown, all must be regarded as remnants of undetermined fiber content (Tr. 67).

The banquet room was about 75 x 100 feet and the sign was located near the cash register at the front end of the room. There was a conversation with Mr. Showers with reference to the question whether the sign could be regarded as being placed in a conspicuous place in immediate conjunction with the merchandise being offered for sale. He estimated that the percentage of unlabeled merchandise might run as high as 90 percent.

Mr. Anderson attended a sales display of International at the Shrine Exposition Hall, Los Angeles (Sale No. 7) on May 3, 1964, and the only testimony given with reference thereto that had any import was that there was a sign 3 x 4 feet posted at each end of the building, reading: "Materials unmarked as to contents are to be regarded as remnants of undetermined fiber content" (Tr. 94). The witness commented:

These signs were easily legible if the customer stood within a reasonable angle in front of such sign. However a person standing anywhere near the middle of the sales room could not read the signs at either end of the room (Tr. 94).

The witness identified an advertisement that appeared in the Daily Pilot/News-Press with reference to a promotion sale by International for four days beginning May 15, 1964, at the Jr. Exhibits Bldg., Orange County Fairgrounds, Costa Mesa (CX 12). On May 15, 1964, he visited the promotion where he met Mr. Turin for the first time. He introduced himself to the respondent, and explained to him the nature of his visit. In the advertisement (CX 12) under the heading "Gigantic Selection of MATERIALS," appeared the words "LINENS" and "DACRON-POLYESTER." The witness testified that he asked to be shown the two named fabrics and purchased a remnant which Mr. Turin called "Linen" (CX 14) and one called "Dacron-Polyester" (CX 15). Neither of the pieces of fabrics was labeled as to fiber content. The building where the

sale was held was roughly 100 x 140 feet with approximately 14,000 to 15,000 square feet. There were two signs approximately 3 x 4 feet in size, worded the same as set forth previously in connection with the Shrine promotion with one at each end of the building. There was a discussion with Mr. Turin in which the witness expressed doubt that these signs could be reasonably considered as conspicuous signs placed in immediate conjunction with the merchandise on display. The witness said that it would not be an unreasonable estimate to say that 90 percent of the fabrics he sampled at the Orange County Fairgrounds were unlabeled (Tr. 82).

On cross-examination, Mr. Anderson testified, in part:

Q. Now I am directing your attention to Commission Exhibit 14, this I believe was a sample you purchased from Mr. Turin at the Orange County Fairgrounds show, is that correct?

A. Yes, sir.

Q. And that was the one dealing with linens, is that correct?

A. That's right, my recollection, yes.

* * * * *

Q. Was your recollection based on your notes?

A. Yes, sir (Tr. 86).

* * * * *

Q. Will you show me the portions of your notes there that you refreshed your recollection as to that point?

A. I don't see the note right at the moment.

Q. Can you recall if there was such a note?

A. Yes (Tr. 87).

* * * * *

Q. Now Mr. Anderson, I notice in that report you refer to, you did not quote the conversation you had with Mr. Turin regarding the fabric, is that correct?

A. I did not state the exact words I had with him, no.

Q. Well, those notes are not enough to refresh your recollection as to what the exact words were I take it?

A. No (Tr. 92).

On the first day of the hearing, Mr. Carl B. Mickelson testified that the first time he contacted Mr. Turin was on July 1, 1963 at the American Legion Hall in Costa Mesa where a promotion fabric show was being conducted. He said he felt that Mr. Turin was not aware of the requirements of the Textile Act as he was relatively new in this type of marketing. The visit was more educational than anything else. After the inspection, he wrote a so-called deficiency letter that was sent to the respondent,

* * * which covered an explanation of the Rule 13 as well as any merchandise that should be labeled, he couldn't avail himself of this particular rule if he in effect could ascertain the content. In addition there was the certain advertising deficiencies and these were again spelled out in part of the deficiency letter (Tr. 102).

Other than what is stated, there is no explanation of the contents of the letter, nor was the letter presented or offered in evidence. There was no signs posted with regard to fiber content. Although the witness said "the number of pieces was estimated because it was a routine inspection which would entail calling for the number of pieces inspected" (Tr. 98), his testimony does not reveal or give any information with reference to any fabric or its labeling. Furthermore, there is no indication in what manner the respondent had violated the law. The next time he contacted International was with Mr. Jackson R. Smith on September 10, 1963 at the El Cortez Hotel in San Diego, "to observe the show and see what type of compliance he was" (Tr. 101). Mr. Turin was not there, so they talked to a Mr. Showers who identified himself as the advertising manager, and he was aware that

* * * I had spoken to Mr. Turin back in July regarding the requirements, but at that time he said they hadn't been able to get the signs prepared and that was the essence of it, that he would make Mr. Turin aware of it (Tr. 102).

There were no signs. Again, a so-called deficiency letter, previously described, was sent to Mr. Turin. There was no testimony showing that any fabrics were on display, nor is there any indication that the respondent had violated the law.

Mr. Mickelson's next visit was on May 15, 1964, at the Orange County Fairgrounds, Costa Mesa, where he accompanied Mr. Anderson. He said that he was present in the hearing room when Mr. Anderson was testifying, and that the total content of what he heard was essentially all true (Tr. 103).

On June 2, 1965, he made a visit to International's combination warehouse and public display room where very limited retail sales are made. He described the premises as a rather small warehouse and display area of possibly 2,000 square feet. He said that he did not estimate how much fabric was on display. Again, the witness did not give any testimony pertaining to the labeling of fabrics. He said there were two signs in the display area; one that was leaning against the wall, and the other hung on the wall. He was shown CX 35 through CX 61, and said that he had obtained them from Mr. Turin at the warehouse mentioned be-

fore on June 29, 1964. He also stated that he visited and spoke to Mr. Turin on June 26 and July 8, 1964, but there is no testimony as to what transpired at that time.

The witness testified that, with Mr. Charles McGordy, an investigator in the Los Angeles Office, he visited Mr. Turin on June 17, 1965, at the American Legion Hall in Vista. Mr. Turin indicated that International had gone out of business through bankruptcy in October 1964, and this was either the first or second show since that time. CX 19 and CX 20 are ads pertaining to said sale, which do not disclose the seller (Sale No. 12), and it appears that this is a sale conducted by Mr. Turin in his individual capacity between the time International ceased to exist and when Round the World started in business. The witness checked the labeling of the fabric exhibited and he estimated that "98 percent of these remnant pieces in the precut lengths that averaged three or four or five and a few inches and in probably in 10 yard lengths were unlabeled" (Tr. 108), except as to yardage and price. There were no signs.

On May 4, 1966, he visited a Round the World show at Union Hall, Azusa, heretofore referred to as Sale No. 16 (CX 21). The hall measured approximately 60 x 60 feet. The witness saw only one sign on the wall and called this to Mr. Turin's attention, but Mr. Turin explained that he had two up on the other wall. On inspection, they found two signs on the floor, which apparently had been put up with an adhesive and had fallen off. The witness looked at the fabrics on most of the tables and he estimated that about 97 percent were unlabeled, except as to yardage and price.

On July 27, 1966, in company with Mr. Jackson R. Smith, he visited a show held at the Disneyland Hotel, Anaheim. The only evidence given with reference to this promotion was that it was conducted in a banquet room in which there were about 50 tables measuring 3 x 6 feet and two signs approximately 18 x 24 inches with the statement that "all materials on display which are not marked as to fiber content are to be regarded as remnants of undetermined fiber content" (Tr. 112). He could not recollect where the signs were located.

Mr. Mickelson was recalled as a witness by complaint counsel on the second day of the hearing after Mr. Turin has testified. In the main, what Mr. Mickelson had to say is confusing and meaningless. With regard to CX 14 and CX 15, previously referred to herein, the witness stated, in part (Tr. 194-195):

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* * * He [Mr. Turin] had indicated earlier at the Orange County show that it was a sinhue pattern from Crown. He had told Mr. Anderson this, and that it was 65 percent dacron polyester and 35 percent avron rayon which was in Mr. Anderson's report, and I accompanied him in observing the area. He accompanied us around and we identified some more of the Crown fabrics.

When asked by Mr. Finch, "Did you request any record keeping of material at that time?" the witness responded (Tr. 195-196):

Yes, I did. I said what is your method of record keeping in regard to how you can certify that you can tie into your label, you can relate to a specific invoice. I said do you have any quality style or quality number or selection system by which you can possibly show in a written form, and he said, no, and acknowledged that after the bolts are cut into shorter lengths the boards and tubes and any tags attached are destroyed.

He added further (Tr. 197):

* * * He explained that prior to his moving to his present location—he had not been there very long—that he had been as he had indicated earlier, using temporary warehouses adjacent to Ben's Cutting Service and that now he was able to keep records in his warehouse together, and this was the first time we were able to see both records and fabrics together, wherein before it was always at shows at distant locations from where he kept his records.

The testimony given by the witness when recalled appears to be with reference to the respondent's operations during a two month period in 1964. This is indicated by the following testimony (Tr. 197-198):

Q. Now, you are referring to a specific period of time and not from 1963 to today, what period of time are you referring to?

A. I am speaking of the time from the show in May—the Orange County show, to the time I made these two visits of 1964 which were in June and July.

Mr. Jackson R. Smith testified that, as a result of an advertisement in the Los Angeles Times on August 28, 1968 (which was shown to the witness but not offered in evidence), he attended a sale on August 29, 1968, held at the Palladium in Hollywood. He described the premises as a large building, 100 x 200 feet, of about 20,000 square feet, customarily used for dances. He said the fabrics were displayed on 3 x 6 feet tables set out in rows running lengthwise and crosswise to the dance floor area, with approximately 4 to 5 feet between the rows. There were also fabrics on tables in the raised areas at the ends of the dance floor. He observed that all the fabrics were labeled showing the size of the

cut and the price. Approximately 90 percent of the fabrics had no labels showing fiber content. There were two signs, approximately 18 x 24 inches, attached to pillars at the elevated ends at each end of the hall. He did not see Mr. Turin, but Mr. Bernstein, the accounts manager at the Palladium, "advised me that he was told Mr. Turin was in Honolulu conducting a sale there at the same time this sale was taking place" (Tr. 121-126).

Mr. Kerper G. Probert testified that in January of 1964, as a result of an advertisement he saw in a San Francisco paper, he and his partner, Mr. Lockler, called at the Palace Hotel in San Francisco where Mr. Turin was conducting a promotion in one of the ballrooms approximately four or five thousand square feet in size. There were tables set out with fabrics thereon on all sides of the room. A good many of the fabrics were labeled, setting out the yardage and the price, and in some cases the fiber content was written in ink across the face of the tag. In most cases, there was no fiber content on the fabric. As he recalled,

* * * at that particular showing there was one sign placed close to the entrance by the cash registers, this was set up on a tripod and was about a three by five sign setting out the information that the pieces unlabeled were referred to as remnants of undetermined fiber content (Tr. 128-129).

A person at the opposite end of the hall from the cash register could not read the sign.

On May 17, 1967, he went to a sale, advertised in the San Francisco paper, at the Hilton Hotel in a square room of about 10,500 square feet. He testified:

Mr. Turin was there at that time and we talked a bit in the lobby of the hotel and he told me I could proceed in through and do whatever I would like to do. So I went and checked the merchandise and found it generally to be labeled pretty much as the other sales with this small pin tickets setting out the yardage, the price, in some cases a fiber content, in most cases no fiber content. Again the fabric was set out on tables, some rectangular about a foot and a half by five feet in length. Others on round tables about four or five feet in diameter. On these tables were set out about 15 or 20 pieces of fabric with either this small pin ticket attached or the larger ticket as I described earlier attached or in some cases nothing except a price (Tr. 130-131).

* * * * *
There were at that time four signs posted. The signs were 15 by 20 inches, one on each wall of the room and one up by one group of cash registers (Tr. 131-132).

He testified that on September 8, 1968, he made another call at the same room at the Hilton Hotel, at which time the promo-

tion was being conducted by International Yardage Fair. When the sale opened, there were no signs whatsoever. However, Mr. Propert stated, "An hour after I made myself known to Mr. Pigman they were—three or four signs put up on the wall" (Tr. 135). When asked if this was Mr. Pigman's business at the time, the witness responded:

He didn't state. He merely said that Mr. Turin was not coming out to the sale and that Mr. Pigman would * * * (Tr. 135).

When asked to name other retail fabric outlets that he had occasion to investigate, he stated:

Well, in the immediate Bay Area we have Home Yardage—Home Yardage has two stores, one on Garey Boulevard and one down in San Mateo; Broadtex Fabrics on Garey Street downtown San Francisco. In my immediate area are any number of stores run by the House of Fabrics, and I could go on and list a hundred (Tr. 133).

* * * * *

The size of both the Home Yardage stores each would be approximately 15,000 square feet in each store of floor space.

* * * * *

Q. Now with regard to the House of Fabrics, can you give us an idea how many stores they have?

A. No, I couldn't tell you how many stores. It is quite considerable.

Q. Can you approximate?

A. I would approximate in the neighborhood of a 100.

* * * * *

Q. What is the location of the hundred stores you mentioned?

A. As far as I know it was a national company. The exact location of the stores I couldn't tell you. They are an interstate operation (Tr. 134-135).

On cross-examination, the following exchange took place (Tr. 135-137):

Q. Now, as to these home fabric stores, they have a hundred stores. I don't believe you indicated * * * .

A. * * * House of fabrics.

Q. Excuse me. They have approximately 100 stores. I don't believe you indicated the size of say their largest store if you know?

A. I don't know their largest store. I only know the stores in the chain that I deal with.

Q. What would you estimate to be the size of the largest store you have been in?

A. The largest store I deal with there is probably 20,000 square feet.

Q. Now you estimated that?

A. Yes. I would say the average is 10,000.

HEARING EXAMINER JOHNSON: Now when you say 20,000 10,000 square feet, are you meaning that portion devoted to fabrics?

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THE WITNESS: Yes, sir.

By Mr. Barnette:

Q. Would that include the sales floor as well as the backup for storage space or just the sales floor?

A. It could include the backup which is a very small part there in that particular operation.

Q. What is the location of that 20,000 square feet store?

A. It is in Salt Lake City, I believe, the largest store.

Q. The one * * * .

A. * * * That I deal with.

Q. And since this is an estimate, could it have been say 15,000 square feet?

A. No, I would stick with 20,000.

Mr. Donald L. Hamilton testified that he had occasion to contact Mr. Turin on August 10, 1967, in visiting a sale conducted at the Exhibition Hall, Seattle, Washington, which had been advertised in the Seattle Times on August 8, 1967. The premises were described as a large building—the old National Guard Armory which had been converted for the purpose of the World's Fair. There is a mezzanine floor and the display area, not counting the mezzanine, is 168 feet wide and 231 feet deep, or 38,808 square feet. Fabrics were displayed on about 250 to 300 tables, each measuring about 3 by 7 feet and arranged in about 15 rows. He stated (Tr. 141–142):

* * * There were, I believe, about 15 rows of tables going the full length of the display area except broken for aisle space running both directions. There were a few cross-aisles and there were regular aisles running lengthways.

There were about 20 pieces of fabrics or cuts, that were folded up, to the table. He examined almost all the fabrics and found no labels as to fiber content. There were six signs, each about 16 x 24 inches, all worded the same as CX 64, three located on the east wall and three on the west wall. When asked if he had any conversation with Mr. Turin during this time, he responded (Tr. 144–145):

Yes, I did. I approached Mr. Turin after having him pointed out by one of the sales personnel, I approached Mr. Turin and identified myself as an investigator for the Federal Trade Commission and asked why they were not labeled, and he pointed out that he felt the signs took care of that, and I said in my opinion they were not adequate.

Q. Did you have any discussion with regard to who ran the business or anything like that?

A. Yes, I did.

Q. What was the subject of that conversation?

A. I asked Mr. Turin if he was the owner and he said he was not, that Mr. Clint Pigman from Costa Mesa was the owner, that he, Mr. Turin, controlled policy and formulated policies:

The witness identified CX 64 as the sign he obtained from Mr. Turin on August 10, 1967. On cross-examination, the witness was asked if he told Mr. Turin how many signs he felt were adequate, and the response, in part, was (Tr. 146-147):

* * * I advised Mr. Turin that in my opinion he should put a remnant sign on every table, even as large as the ones posted on the walls or at every other table. Mr. Turin's reply was that all the customers would see would be a forest of signs as they entered and that would kill his business and that is pretty close to being a verbatim quote.

The following exchange also took place (Tr. 147-148):

Q. Well, how far away would you be from the nearest sign when you were in the display area?

A. Any given time?

Q. Pick the most extreme.

A. From the most extreme it would be 80 or 85 feet.

Q. Okay. 20 or 25 yards, does that sound about right?

A. 80 or 85 feet. Somewhere in there.

Q. Can you yourself read this sign from that distance, if you know?

A. I don't know. I think it would be rather difficult.

On May 19, 1968, the witness visited a promotion held in the same Seattle Exhibition Hall heretofore mentioned, and he found the situation to be about the same as he previously described.

It was stipulated by counsel for the parties that Miss Idelle M. Shapiro is qualified to testify as an expert in the field of fiber identification, that physical exhibits CX 14 and CX 15 were submitted to her to be analyzed as to their fiber content, using approved test methods, and that she found the fiber content of CX 14 to be as set forth in her report (CX 62) and CX 15 to be as set forth in her report (CX 63). The full text of the stipulation is set out on pages 25 and 26 of the transcript herein. Report CX 62 reads:

May 1, 1968

Turin Physical Exhibit A (68-172) was analyzed microscopically and chemically, and the fiber content was found to be rayon with a very small amount of silk contained in some of the slubs. There are no linen fibers present.

I. Shapiro

Report CX 63 reads:

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The above exhibit was analyzed and was found to contain the following:

	<i>test a</i>	<i>test b</i>
Turin G	28.3% rayon	27.9% rayon
68-173	71.7% polyester	72.1% polyester

I. Shapiro

When Miss Shapiro was shown CX 14 and was asked to point out what, in her opinion, are defects in the fabric, she answered, in part (Tr. 29-30):

In looking at this piece in front of me right now, there is a yarn that within the yarn itself it has a dark grease mark.

* * * * *

You can see where the yarn is dirty. It is in the yarn itself.

* * * * *

This particular fabric, in the counting analysis, there are small slugs of yarn all through it, or that could be called nets. Yarns actually don't sluff right off, they are in there very loosely.

* * * * *

It is not a normal situation from a personal opinion as someone who works with textiles, I would not call it desirable to have pieces of fabric coming off.

* * * * *

Yes, I make most of my own clothes and I sew and design in production of clothes, and I would not find this a desirable aspect of a fabric and from a consumers point of view it would be very undesirable to have pills or slugs or pieces of your fabric fluffing off. It would lose the original appearance of the fabric historically.

On cross-examination, she added (Tr. 33):

This type of stain which is actually on the yarn itself definitely would have been put into that fabric when it was woven and therefore had been on the fabric the whole time because it is actually carried through the weave and you would not have a spot on a yarn going one direction after the fabric was woven.

With reference to CX 15, Miss Shapiro said, in part (Tr. 32):

There are several yarns that are thicker in this piece of fabric that I would consider undesirable and not part of the normal pattern.

* * * * *

This yarn was broken, the yarn is misshapen and broken. Here is a heavier yarn that is not part of the natural fabric weave. Here is a dirty spot and also a thickening yarn. This is just over a small area. Here is another thickening yarn. Here is another misshapen yarn. That is just a partial part of the fabric.

* * * * *

It definitely contains defects. If I had bought that fabric as recommended particularly to make a dress, that defect in laying out the pattern would be in a prominent place and before any of the defects would be in a prominent place I would be very dissatisfied.

Mr. Ben Rosenberg, of Los Angeles, testified that he is engaged in a business called a cutting service and has been in the trade for 28 years. He went into business for himself five years ago when he and a Mr. John Stevens found a partnership doing business as Stephan & Ben Cutting Service. Six months thereafter the witness bought out his partner. During the months of February and March 1964, he performed cutting service for Mr. Turin of materials that were delivered to him by car, truck, and otherwise. The fabrics would come in on boards, bolts, tubes, rolls, and all different ways. He never paid any attention if there were any labeling or if there were any kind of description of materials. The materials were cut into two, three or four yard lengths and, based upon information supplied by the respondent, in some instances, pieces were ticketed to show the yardage and what they were to sell for. The bolts, boards, rolls and the like were thrown away in the garbage. No instructions were given to save anything like that. Any invoices received by him of fabrics delivered to him by a supplier were never examined by him, but were handed to Mr. Turin when he came in. Invoices of Crown Fabrics (CX 35 through CX 51), dated February 10, 1964, to April 22, 1964, and of Rube P. Hoffman Co. (CX 55 through CX 59), dated March 12, 1964, all billed to International Yardage Fair and shipped to Stephan & Ben Cutting Service, show the fiber content of the materials listed in most instances.

The witness said that he would be able to identify a flaw in a piece of fabric such as he had heard testified to by Miss Shapiro. When shown CX 14, he said that he saw "slugs in the material, a lot of them" (Tr. 48). Asked to explain what a slug is, he answered (Tr. 48-49):

I am calling these that run through the fabric like this here, and I would honestly say that if this roll or piece of goods came into my place to be layed up as dresses, and if they were going to be cut into dresses and sold for \$25 a dress in stores, I would go ahead and cut them and not be afraid and call this damaged, I would, really. I would take all these slugs as the nature of this fabric, it would have to be an outstanding damage of some kind, a run, a rip, a real tear before I would take the piece of goods off the rack and not spread it and call it a damaged piece of goods.

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When shown CX 15 and asked to pick out anything he might consider to be a defect, he answered (Tr. 51):

Well, this is a very thin fabric, it is very chintzy, there is a little slug.

* * * * *
It's got a little damage there, yes.

* * * * *
Yes, that is a damage in the weave. Again this damage can be worked out.

* * * * *
Well, in the process of cutting dresses, your Honor, I want to bring out this is a cheap piece of material and you are bound to find damages, and you could find this in a piece of merchandise costing \$8.00 a yard, because there is nothing perfect and I will show you that.

HEARING EXAMINER JOHNSON: You mean there is no perfect weave?

THE WITNESS: There is not. No. And I don't care if you have a \$300 suit, I will show you damages in that suit (Tr. 52).

Mr. Richard Mangam, of Orange, California, advertising salesman for the Los Angeles Times, testified that the Turin account has been his, exclusively, for the past five years; that more times than not he would not submit a copy of an ad to Mr. Turin for his approval, but "would go ahead with it on my own" (Tr. 55). He would proceed according to instructions of Mr. Turin a lot of the times, "and from that I will go, sometimes I will create phrases that we use in these ads, sometimes there will be phrases that he gives us" (Tr. 55). The witness was shown an advertisement in the Los Angeles Times on April 29, 1964 (CX 7), concerning an International sale at the Shrine Exposition Hall, Los Angeles, from April 30 through May 4, 1964, worded in part: "OVER 32,000 SQ. FT. * * * LARGEST DISPLAY OF MATERIALS IN THE WORLD!!! 1/2 MILLION YARDS of sample cuts and bolts * * * LARGEST SELECTION OF MATERIALS ever gathered under one roof." When asked if this was his creation, he said (Tr. 56):

* * * I don't remember where the wording came from, but the sounding of the words, I would say I drafted them up. * * * I would guess probably that these words were derived out of conversation we had over a period of time.

He added (Tr. 56-57):

* * * usually in working with an account, I have over a period of time a pretty good idea of their thinking as well as our own, we know the store, where in this case we were told he was going to start an exposition over which I happened to know was a pretty good size hall, I would have easily said without any qualms on my part, I was puffing as you say, being a

little familiar with the business since I have handled his ads for so many years. I have never been aware of anywhere, of any larger displays was being put on at this given time.

Mr. Mangam said that he did not know of any other fabric retailers who have ever used 32,000 square feet or more. As to the statement showing the amount of materials on display, the witness said (Tr. 58):

That phrase I think would probably have come from Mr. Turin to me because that is too specific to say a half million, I wouldn't know how many yards he was going to display.

The witness said that he assumed, under the circumstances he had outlined, that he had approval to go ahead to make up the ad and publish it; that, to his knowledge, there had never been any complaints from advertisers, consumers, or anyone else with reference to the use of the words "the largest display" and "a half million yards"; and that Mr. Turin's account with the Los Angeles Times was "of the highest degree" (Tr. 59). The witness further testified (Tr. 59):

Q. Just one more question. Referring to Commission Exhibit 7, with regard to the largest display and the half million yards, did you ever receive any calls from Mr. Turin, any communications of any kind with regard to the fact this was incorrect, or these statements were incorrect?

A. On this particular ad, I would say not.

After the last mentioned question and answer, on cross-examination the following exchange took place, in part:

By Mr. Barnette:

Q. On some ads, I take it that means Mr. Turin did call you?

A. I believe and I am researching my memory now, that this ad was the first time this ad as such ever appeared, it was at the Shrine. It sticks in my mind that we ran the ad again in the Times for a smaller sale and if some of these phrases were in there, I was told they should not have been.

HEARING EXAMINER JOHNSON: You were told what?

THE WITNESS: They should not have been. This was a mechanical oversight on my part, for instance the worlds largest display of materials—I don't remember where this happened, had it been in the Van Nuys show or something like that, I should not have put it in. I did let it slip by.

By Mr. Barnette:

Q. And then Mr. Turin called and explained it that it shouldn't have been?

A. Yes (Tr. 59-60).

* * * * *

Q. Have you attended any of Mr. Turin's shows as advertised in the paper?

A. Yes.

Q. I don't know if you know the answer to this or not, I hope you know the answer but I don't know what it is, have you ever observed their procedure as to refunds of materials?

A. I have seen it on a few occasions.

Q. What would you see, tell us?

A. Well a customer would just come up and would be unhappy with it, and they would say whoever was on the cash register would ask what the charge was, and in many cases I have seen where the tickets weren't even mentioned and it was just an automatic refund.

Q. They would come up with the material and would say I would like my money back?

A. That's right.

Q. And take their word for the price and give the money back and take the material?

A. Yes (Tr. 61-62).

Mr. Michael Turin, the respondent herein, testified that he last operated as International Yardage Fair on October 13, 1964, and that he has never advertised under that name since that time; that Mr. Clint Pigman is the sole owner of Round the World Commodities; and that he, Mr. Turin, as general manager does all the things he did when he ran his own business, so that all of the advertising, pre-arranging for sale areas, purchasing of the articles, policy making, and all things akin to the business are done by him. Mr. Turin testified that, "Only to the extent of watching his money and the cash registers and a few other things in this capacity" was the part that Mr. Pigman took in the operation of the business (Tr. 154).

During all the period mentioned herein, most of the fabrics represent excess accumulation of manufacturers (which might be called closeouts), which they desire to clear out, purchased in large lots by the respondent directly from mills or through jobbers. It was respondent's guess that as much as 15 percent of all his purchases indicated the fiber content at any point (Tr. 161). He said, "In 1964 as now about 90 percent of the fabrics we offered for sale we do not have the evidence or we do not have an invoice or a content label where we can put it on a piece that we sold" (Tr. 200). He further testified (Tr. 162-163):

* * * if we have evidence of the fiber content, we put the content on the tag with a snip on the material and we write on the label where it came from and when we got it.

* * * * *

As required by the Federal Trade Commission's rulings and our relationship and so on, the things that are decidedly evidenced by invoices and so on, we place a tag on the material and get our information from the invoices and so on, with the contents on it.

In addition, the following exchange took place (Tr. 163-164):

Q. Now speaking of the fabric which you have just mentioned, you cut it and tagged it, can you relate that particular fabric back to its source through your records?

* * * * *

A. Yes, we could.

Q. How would you do it?

A. We would do it by simply taking the piece of fabric—a sample of it—a sample that we had cut as a sample off the bolt and check the source from where it came and even the date when we got it, so it makes it easy to go back and check.

Q. And this is a record that you maintain?

A. Yes.

Mr. Turin explained the procedure employed by him on labeling as to fiber content of materials delivered directly to Mr. Rosenberg during the two months period in 1964. He would go to Mr. Rosenberg's store immediately upon their delivery and take a clip off the materials showing a number which corresponded with the number set forth on invoices. Mr. Rosenberg was instructed to keep separate, and not mix, the cuttings of materials from each supplier (Tr. 169). Mr. Turin said that he never removed tags relating to fiber content without replacing the tag or keeping a record of such removal of the tag (Tr. 200-201). The witness said that he thought the Shrine show was the world's largest display of fabrics, and that he had a half million yards of fabric on display at one time (Tr. 174-175); that he was familiar with the House of Fabrics and the last he heard they had approximately 146 stores; and that his business, insofar as individual stores were concerned, was larger, but, collectively, the House of Fabrics was larger (Tr. 175).

With reference to Mr. Anderson's testimony relating to purchases made at the Orange County Fairgrounds, Mr. Turin testified, in part (Tr. 181-182):

This material, Commission Exhibit 14, I really don't recall Mr. Anderson buying it, if he said he bought it, certainly, but relating to his statement that I identified this as a particular fiber, I wouldn't have done it then and I don't do it now. In looking at this particular piece of fabric I would never have identified it as linen as he said I identified it as linen and I can explain why I wouldn't. I don't hold myself up as an expert as to what fiber is by feeling it. That is something I have learned in the business.

Q. Okay. Can you tell us.

A. If I wanted to make a guess I would never guess this to be linen then or now, because after four years I notice that it doesn't have any wrinkles

in it, just creases. In crushing it it doesn't show any wrinkles and this tells me from experience that it isn't linen because linen I have been able to identify as pure linen does wrinkle. When you press it in your hand it wrinkles.

In regard to defects or flaws appearing in CX 14 and CX 15, Mr. Turin said (Tr. 188):

There is a flaw right he[re] near the selvage edge on Exhibit number 15. There are little pieces of loose thread on this same exhibit which these loose threads could be from the cutting, and I believe the loose pieces of thread on both Exhibits 14 and 15 came from the cutting machine. This little very minute thing here in the weave looks like it is in the weave, and perhaps would be classed as a flaw, but nothing that a person couldn't sew around and I don't think you would ever see it in a garment. Again here are little marks that could be dirt or grease but again it is about an inch and a half or two from the selvage edge and would be discarded in the making of a garment.

Mr. Turin stated that, with the exception of the testimony given on the first day of the hearing pertaining to flaws in the two pieces of material (CX 14 and 15), he could not think of nor recall where the Federal Trade Commission ever called to his attention any other defective material (Tr. 187).

With reference to guarantees, the witness testified (Tr. 186-187):

The presumption on my part since we started putting on shows in May of 1962 are they are human and can miss a flaw, it very well happens—no that was in 1963—for the sake of good business of making sure that our customers would never be unhappy, we would always offer an unconditional guarantee. Unconditional to us meant then and we do it today, that if you have a complaint about the material, bring it back and we will return your money, and we even go a step further in that they can mail it back and we will return the money immediately. The other things we do is once in a while a person may have spent the money for a zipper and then finds the material contains flaws and writes back to us, and we will write back to that person and say how much do you feel your time is worth and the zipper, and how much you paid for the material, and if they come back with something like two dollars or three dollars for the zipper and their time, we will return that money as well as the money for the fabric. If it is not realistic where the person is trying to take advantage of us, we will try to resolve it and give them more than they ask for. We have always made it a point to give them a little more than the customer asks for.

The evidence herein establishes that the respondent has violated the second alleged charge in the complaint, set forth as Paragraph Four thereof as follows:

PARAGRAPH FOUR: 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 prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products which were not labeled to show in words and figures plainly legible: (1) the true generic names of the constituent fibers present in the textile fiber products; (2) the percentage of each such fiber; and (3) any fiber or group of fibers present in the amount of 5 percentum or less as "other fiber" or "other fibers."

The pertinent parts of Rule 13, adopted by the Commission pursuant to the provisions of Section 7 of the said Act, read:

RULE 13—Sale of Remnants and Products Made of Remnants.

(a) In disclosing the required fiber content information as to remnants of fabric which are for practical purposes of unknown or undetermined fiber content:

(1) The fiber content disclosure of such remnants of fabrics may be designated in the required information as "remnants of undetermined fiber content."

(2) Where such remnants of fabrics are displayed for sale at retail, a conspicuous sign may, in lieu of individual labeling, be used in immediate conjunction with such display, stating with respect to required fiber content disclosure that the goods are "remnants of undetermined fiber content."

The respondent admitted that about 90 percent of the fabrics offered for sale at all the times mentioned herein were not labeled as to fiber content, stating as the reason that he did not know the fiber content, and it is undisputed that none of such fabrics were labeled with the words "remnants of undetermined fiber content." At some of the sales conducted by the respondent, no signs were posted in lieu of individual labeling. In other instances where signs, such as CX 64 (hereinbefore described), were used, they were in places not "in immediate conjunction with" the remnants of fabrics displayed for sale.

As to the other alleged violations in the complaint, there is no evidence in the record that would warrant the entry of a cease and desist order. Section 2.6 of the Commission's Rules of Practice for Nonadjudicative Procedures reads:

§ 2.6 *Notification of purpose.*—Any person under investigation compelled or requested to furnish information or documentary evidence shall be advised with respect to the purpose and scope of the investigation.

The respondent has been the subject of investigation since 1963, and it is interesting to note that the respondent was repeatedly told by the investigators who called on him that, in their opinion,

the signs posted in lieu of individual labeling of remnants of undetermined fiber content were not adequate to meet the requirements of the law, but the record contains no specific testimony that the respondent was told by any investigator that he was suspected of being guilty of the other violations alleged in the complaint.

The first alleged violation in the complaint, set forth in Paragraph Three thereof, reads:

PARAGRAPH THREE: Certain of said textile fiber products were misbranded by respondent within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and Rules and Regulations promulgated thereunder in that they were falsely and deceptively stamped, tagged, labeled, 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 which were advertised in the Daily Pilot/News-Press, a newspaper published in Newport Beach, California, and distributed in interstate commerce. The said advertisement contains terms which represented, either directly or by implication, that certain fibers were present in the said product, when such was not the case.

Among such terms, but not limited thereto, was the term "Linens," which was used to describe a textile fiber product which in truth and in fact was made of rayon and was not composed of linen nor did it contain any linen fibers.

To sustain this charge, the evidence is limited to the circumstances in connection with the purchase of two remnants (CX 14 and CX 15) more than four years ago, heretofore recited in the testimony of Mr. Anderson, which is not convincing that the respondent had represented that the purchased remnants contained certain fibers. Mr. Mickelson accompanied Mr. Anderson on May 15, 1964 at the time the two purchases were made and, when he made his appearance as a witness on the first day of the hearings, the only testimony he gave with reference thereto was that he was present in the hearing room when Mr. Anderson was testifying and that the total content of what he heard was essentially all true. However, when recalled as a witness on the second day of the hearing, Mr. Mickelson, when questioned with regard to CXs 14 and 15, testified, in part, that "He [Mr. Turin] had told Mr. Anderson this, and that it was 65 percent dacron polyester and 35 percent avron rayon" (Tr. 194-195), which seems to conflict with the testimony given by Mr. Anderson. The two purchased items were not labeled as to fiber content and should be considered as remnants of undetermined fiber content according to the signs posted, known to the witness. A small per-

centage of the remnants on display at the various sales set forth the fiber content, and the record fails to disclose a single incident where any such fabrics were mislabeled.

The third alleged violation in the complaint, set forth in Paragraph Five thereof, reads:

PARAGRAPH FIVE: Certain of said textile fiber products were falsely and deceptively advertised, in that the respondent, in making disclosure or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote and assist, directly or 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 such textile fiber products, but not limited thereto, were fabrics which were falsely and deceptively advertised in the Los Angeles Times, a newspaper published in Los Angeles, California, and distributed in interstate commerce, in that the trade name of the fiber was used in lieu of the true generic name of the fibers in such articles.

In one isolated instance in an advertisement by International appearing in the Los Angeles Times on September 4, 1963 (CX 1), the trade name of "Dacron" was used alone without using the generic name of the fiber "polyester" in immediate conjunction therewith, as required by the Act and the Rules and Regulations thereof. The said fabric has been set forth in twenty advertisements thereafter, and in each instance the words "Dacron Polyester" have been used as required (CX 2, 3, 4, 7, 8, 9, 10, 12, 13, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26 and 34).

The fourth alleged violation in the complaint, set forth in Paragraph Six thereof, reads:

PARAGRAPH SIX: Respondent, in violation of Section 5(a) of the Textile Fiber Products Identification Act, has caused and participated in the removal of, prior to the time textile fiber products subject to the provisions of the Textile Fiber Products Identification Act were sold and delivered to the ultimate consumer, labels required by the Textile Fiber Products Identification Act to be affixed to such products, without substituting therefor labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

In support of this charge, complaint counsel, in their proposed findings, rely solely on the testimony of Mr. Rosenberg with reference to his actions in performing cutting services for Mr. Turin during the months of February and March, 1964. They would ignore the testimony which they induced from the respondent, which the hearing examiner considers credible, where he

explained in detail the procedure he employed to label the materials cut by Mr. Rosenberg as to fiber content where such fiber content was known. There is no evidence in the record that the respondent did not substitute a proper label of his own where that of the manufacturer or distributor was removed.

The fifth alleged violation in the complaint, set forth in Paragraph Seven thereof, reads:

PARAGRAPH SEVEN: Respondent, in substituting a stamp, tag, label or other identification pursuant to Section 5(b) has not kept such records as would show the information set forth on the stamp, tag, label or other identification that was removed, and the name or names of the person or persons from whom such textile fiber product was received, in violation of Section 6(b) of the Textile Fiber Products Identification Act.

The pertinent parts of the Commission's Rule 39 with reference to *Maintenance of Records* read:

(b) Any person substituting a stamp, tag, label, or other identification pursuant to Section 5(b) of the Act shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received.

(c) The records required to be maintained pursuant to the provisions of this rule shall be preserved for at least three years.

In the entire record, there is only one question put by complaint counsel to one of the investigators and his answer thereto with respect to the records kept by the respondent. With reference to a discussion had on June 29th or July 8, 1964, with Mr. Turin at his warehouse retail operation setup, Investigator Mickelson was asked, "Did you request any record keeping of material at that time?", and he answered (Tr. 195-196):

Yes, I did. I said what is your method of record keeping in regard to how you can certify that you can tie into your label, you can relate to a specific invoice. I said do you have any quality style or quality number of selection system by which you can possibly show in a written form, and he said, no, and acknowledged that after the bolts are cut into shorter lengths the boards and tubes and any tags attached are destroyed.

Subsequently Mr. Mickelson during his testimony volunteered the following (Tr. 197):

He explained that prior to his moving to his present location—he had not been there very long—that he had been as he had indicated earlier, using temporary warehouses adjacent to Ben's Cutting Service and that now he was able to keep records in his warehouse together, and this was the first time we were able to see both records and fabrics together, wherein before it was always at shows at distant locations from where he kept his records.

From what has been said, it is impossible to ascertain whether or not the respondent kept the records required to be maintained. It would have been a simple matter for complaint counsel to obtain this evidence by subpoenaing the respondent's records which he was required to preserve for at least three years.

In addition to the alleged violations of the Textile Fiber Products Identification Act, which have heretofore been discussed, in the complaint in Paragraphs Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen the respondent is charged with violation of Section 5 of the Federal Trade Commission Act by falsely and deceptively advertising, in newspapers of interstate circulation, that

(a) respondent's operation was the "THE WORLD'S LARGEST DISPLAY OF MATERIALS" and like statements;

(b) the fabrics offered for sale were "ALL FIRST QUALITY"; and

(c) the fabrics were unconditionally guaranteed.

The first time the respondent used the statement as to the world's largest display of materials was in identical advertisements on April 26, 1964 in the Los Angeles Times and the Los Angeles Herald-Examiner (CX 5 and 6) with reference to a fair and sale to be conducted by International at the Shrine Exposition Hall, Los Angeles, beginning on April 30, 1964. The advertisements read:

WORLD'S LARGEST DISPLAY AND SALE

Over 32,000 sq. ft. of display space. Never before have so many fabrics been displayed and sold under one roof.

The record contains four other ads in the same two papers between April 29 and May 5, 1964, with reference to the same sale (CX 7, 8, 9 and 10). Three of such ads are the same and contain the following statements:

OVER 32,000 SQ. FT.

* * * * *
LARGEST DISPLAY OF MATERIALS IN THE WORLD!!!
1/2 MILLION YARDS of sample cuts and bolts made for manufacturers of clothing!!!

* * * * *
LARGEST SELECTION OF MATERIALS ever gathered under one roof.

Similar ads appeared with reference to three other sales by International (CX 11, 12, 13, 16 and 34) and four sales by Round the World (CX 21, 24, 25 and 26).

On July 26, 1966, in an ad in the Los Angeles Times, Round the World, with reference to a sale at the Disneyland Hotel, Anaheim, made the following statement (CX 22):

13,000 SQ. FT. OF DISPLAY SPACE

This is one of our largest sales ever in this area. The gorgeous Magnolia Room will be "jam-packed" with the most fabulous array of materials you have ever seen.

Advertisements by Round the World containing substantially the same statement appeared in the Los Angeles Times on September 18, 1966 (CX 27); August 14, 1966 (CX 28); and September 4, 1966 (CX 31), with reference to its sales at the Hacienda Hotel, El Segundo; Union Hall, Azusa; and the Biltmore Hotel, Los Angeles, respectively.

Although complaint counsel attempted to challenge the truthfulness of respondent's statements in the advertisements above discussed through the testimony offered by Investigator Probert, heretofore recited in some detail, there is nothing in Mr. Probert's testimony which establishes that such statements are false, misleading, and deceptive. Furthermore, in the opinion of the hearing examiner, such representations should be regarded as legitimate, harmless puffing. See *United States v. New South Farm and Home Company*, 241 U.S. 64-67; *Kidder Oil Co. v. F.T.C.*, 117 F.2d 892 (7th Cir. 1941).

The statement "ALL FIRST QUALITY" appeared in ads with respect to six of the eleven sales conducted by International, all during the years 1963 and 1964 (CX 1, 2, 3, 4, 17, 18 and 23), and in ads with respect to a sale apparently conducted by the respondent at Vista, California, on June 17 and 18, 1965 (CX 19 and 20). The representation does not appear in any of the ads of the eleven Round the World sales. Testimony was given by Miss Shapiro and Mr. Rosenberg in regard to flaws appearing in the two pieces of fabric purchased by Mr. Anderson at the Orange County Fairgrounds (Costa Mesa) sale on May 15, 1964 (CX 14 and 15). Neither witness testified that either fabric was not first quality. Considering the testimony of the Commission's witness, Mr. Rosenberg, including his statement that there is no perfect weave, and the fact that there is no testimony with reference to guides followed by the industry to determine what is "first quality," it is difficult to say that the two fabrics were not first quality. The record shows (CX 62 and 63) that the two fabrics remained in the possession of the Commission for approximately four years before they were analyzed on May 1, 1968 as to fiber content, a date sub-

sequent to the issuance of the complaint. Furthermore, it is not material whether or not the two fabrics were first quality, in that none of the ads relating to the sale where they were purchased contain the representation "ALL FIRST QUALITY" (CX 11, 12 and 13). Three invoices of Crown Fabrics of New York, N.Y., dated February 10, 1964 (CX 35), February 25, 1964, (CX 42), and April 23, 1964 (CX 53), of sales to International show all the listed fabrics to be "SECONDS." Two other invoices of Crown, dated February 26, 1964 (CX 43), and March 27, 1964 (CX 50A-B), of sales to International show all the listed fabrics to be "AS-SORT[ED] QUALITIES," from which it might be inferred that some of the fabrics are seconds. However, there is no evidence to establish that any of the mentioned fabrics were displayed for sale or sold at sales where the ads pertaining thereto represented that the materials were "ALL FIRST QUALITY."

Ads with respect to six sales conducted by International between the dates of September 5, 1963 and January 6, 1964, used the word "GUARANTEED." International, in an ad as to a sale held during August 1964, used the words "100% Money-Back GUARANTEED" (CX 23). Like words were used in ads in connection with respondent's sale of June 17 and 18, 1965 (CX 19 and 20), and in Round the World ads with respect to four of its sales held between July 26, 1966, and September 23, 1966 (CX 22, 27, 28, 30 and 31).

The Commission's witness, Mr. Mangam, of the Los Angeles Times, testified that he had attended some of Mr. Turin's shows; that he had seen on a few occasions where a customer had asked for his money back; and that the material was returned and an automatic refund made, taking the customer's word as to the price he had paid. There has been set forth heretofore the testimony of Mr. Turin with reference to guarantees, which the hearing examiner regards as credible (Tr. 186-187). The respondent's statement that the fabrics were unconditionally guaranteed is not contradicted, and there is no evidence offered to show that respondent's guarantee on such products was conditional. Furthermore, there is no evidence that a single customer was refused a total refund when it was requested.

ORDER

It is ordered, That respondent Michael M. Turin, an individual formerly trading as International Yardage Fair, 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 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 by failing to disclose the required fiber content information as to remnants of fabrics which are for practical purposes of unknown or undetermined fiber content that are displayed for sale at retail by labeling such remnants of fabrics as "remnants of undetermined fiber content" or, in lieu of such individual labeling, by using, in immediate conjunction with such display, a conspicuous sign reading "remnants of undetermined fiber content."

FINAL ORDER

The hearing examiner having filed his initial decision in this matter on January 10, 1969, and no appeal having been taken therefrom; and

The Commission, by its order of March 7, 1969, having stayed the effective date of the initial decision until further order of the Commission; and

The Commission now having determined not to place this case on its own docket for review:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent 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 the order to cease and desist contained in the aforesaid initial decision.

Complaint

75 F.T.C.

IN THE MATTER OF

GIBSON SALES, ET AL.

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

Docket C-1519. Complaint, Apr. 24, 1969—Decision, Apr. 24, 1969.

Consent order requiring a Chicago, Ill., distributor of punchboards and other lottery devices to cease selling or distributing these items in commerce.

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 Gibson Sales, a partnership, and Ruth Berdick and Frank W. James, individually and as copartners trading and doing business as Gibson Sales, 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 Gibson Sales is a partnership comprised of the following named individuals who formulate, direct and control its acts and practices as hereinafter set forth. The principal office and place of business of said partnership is located at 2222 South Michigan Avenue, in the city of Chicago, State of Illinois.

Respondents Ruth Berdick and Frank W. James are individuals and copartners trading and doing business as Gibson Sales with their principal office and place of business located at the above-stated address.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the sale and distribution of various converted paper products including punchboards and other devices. Respondents sell such devices to jobbers and distributors for resale to retail customers and also sell to other purchasers.

PAR. 3. Respondents, in the course and conduct of their business, now cause, and for some time last past have caused, said products, when sold, to be shipped and transported from their place of business in the State of Illinois to jobbers, distributors