

Complaint

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IN THE MATTER OF

TENNESSEE VALLEY ENTERPRISES, INC., DOING BUSINESS
AS BAR-KNIT HOSIERY MILLS, ETC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS
IDENTIFICATION ACTS*Docket C-2079. Complaint, Nov. 11, 1971—Decision, Nov. 11, 1971*

Consent order requiring a Philadelphia, Tenn., hosiery manufacturer to cease misbranding and falsely guaranteeing its textile fiber products, and implying that its hosiery will aid in controlling athlete's foot.

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 Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knight Hosiery Mills, and Bar-Knit Hosiery, Inc., and J. Earl Barger, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Textile Fiber Products Identification Act, and it now appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tennessee Valley Enterprises, Inc., doing business as Bar-Knit Hosiery Mills and Bar-Knit Hosiery, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. The respondent corporation maintains its main offices and principal place of business in Philadelphia, Tennessee.

Respondent J. Earl Barger is an officer of said corporation. He formulates, directs and controls the practices of the corporate respondent.

Respondents are engaged in the business of manufacturing textile fiber products, namely men's, boys' and girls' hosiery.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture 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; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported, and caused to be transported after shipment in commerce, textile fiber products, either in their original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

COUNT I

PAR. 3. Certain of said textile fiber products were misbranded by respondents within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of the constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely hosiery, which contained substantially different amounts and types of fibers than as represented.

PAR. 4. Certain of said textile fiber products were misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(b) of the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

1. To disclose the true generic names of the fibers present.
2. To disclose the percentages of such fibers by weight.
3. To disclose the name, or other identification issued and registered by the Commission, of the manufacturer of the products or one or more persons subject to Section 3 with respect to such products.

PAR. 5. Respondents have failed to maintain and preserve proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act, and Rule 39 of the rules and regulations promulgated thereunder.

PAR. 6. Respondents have furnished false guaranties that certain of their textile fiber products were not misbranded or falsely invoiced, in violation of Section 10(b) of the Textile Fiber Products Identification Act.

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PAR. 7. The acts and practices of respondents as set forth above were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in commerce, under the Federal Trade Commission Act.

COUNT II

PAR. 8. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, namely hosiery, when sold, to be shipped from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind as that sold by respondents.

PAR. 10. In the course and conduct of their business, the aforesaid respondents, on certain style hosiery, placed paper bands thereon disclosing "Aids in controlling athletes foot," thus stating or implying that consumers purchasing such products will receive therapeutic benefit through wearing such style hosiery. In truth and in fact, consumers will not receive any therapeutic benefit through wearing such hosiery. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 11. In the course and conduct of their business, the aforesaid respondents, on certain style hosiery, placed paper bands thereon disclosing "One year absolute guarantee," thus stating or implying that consumers purchasing such products will receive a one year unconditional guaranty. In truth and in fact, the aforesaid respondents fail to disclose; (1) what, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee; (2) the manner in which the guarantor will perform, and (3) the identity of the guarantor. Thus the aforesaid representation is false, misleading and deceptive.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead distributors and the consuming public into the erroneous and mistaken belief that such

statements and representations were, and are, true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as set forth in Paragraphs Eight through Twelve, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tennessee Valley Enterprises, Inc., doing business as Bar-Knit Hosiery Mills and Bar-Knit Hosiery, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee. Its offices and principal place of business is located in Philadelphia, Tennessee.

Respondent J. Earl Barger is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. The address of J. Earl Barger is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and its officers, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, in commerce, or in the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

B. Failing to maintain and preserve records of fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills,

and Bar-Knit Hosiery, Inc., or any other name and its officers, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced or advertised under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing or implying, in any manner, that respondents' hosiery or other products aids in controlling athlete's foot, or have any therapeutic benefit, unless such is the fact.

It is further ordered, That respondents Tennessee Valley Enterprises, Inc., a corporation, doing business as Bar-Knit Hosiery Mills, and Bar-Knit Hosiery, Inc., or any other name, and J. Earl Barger, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Using the expression "One year absolute guarantee" or similar representations unless respondents disclose what, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee; the manner in which the guarantor will perform, and the identity of the guarantor are clearly and conspicuously disclosed.

2. Representing, directly or by implication, that any of respondents' articles of merchandise are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That respondents notify the Commission at least 30 days prior to any change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any

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other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein shall, within 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