

Complaint

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It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.
Chairman Kirkpatrick not participating.

IN THE MATTER OF

CCM: ARTS & CRAFTS, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8817. Complaint, June 23, 1970—Decision, Feb. 16, 1972

Order dismissing a complaint against a College Park, Md., marketer of wood fiber square sheets and pre-cut wood fiber flower petals which charged a violation of the Flammable Fabrics Act on the grounds that the firm had voluntarily stopped selling the products, had cooperated fully with the Commission, and that the sales were *de minimis*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that CCM: Arts & Crafts Inc., a corporation, and Charles Ellerin, Albert Ellerin and Eric Beissinger, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the rules and regulations promulgated under the Flammable Fabrics 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 CCM: Arts & Crafts Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Respondents Charles Ellerin, Albert Ellerin and Eric Beissinger, are officers of said corporate respondent. They formulate, direct and control the acts, practices and policies of said corporation.

The respondents are engaged in the sale and distribution of hobby and art supplies, including but not limited to wood fiber square sheets and pre-cut wood fiber flower petals, with their principal place of business located at 321 Park Avenue, Baltimore, Maryland.

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PAR. 2. Respondents are now and for some time last past have been engaged in the manufacture for sale, the sale or offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, fabric, as "commerce" and "fabric" are defined in the Flammable Fabrics Act, as amended, which fabric failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such fabric mentioned hereinabove were wood fiber square sheets and pre-cut wood fiber flower petals which were intended for use in or which could reasonably be expected to be used in wearing apparel.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the rules and regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Frank W. Vanderheyden and Mr. Freeman C. Murray supporting the complaint.

Mr. Thomas S. Markey, Mr. Charles J. McKerns and Mr. Peter J. Gallagher, Dow, Lohnes and Albertson, Washington, D. C. for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

APRIL 16, 1971

PRELIMINARY STATEMENT

The complaint in this proceeding, issued on June 23, 1970, alleges that CCM: Arts & Crafts, Inc., a corporation, sometimes hereinafter referred to as "CCM," Charles Ellerin, Albert Ellerin, and Eric Beissinger, individually and as officers of said corporation, hereinafter called respondents, violated the Federal Trade Commission Act and the Flammable Fabrics Act by selling and offering for sale, in commerce, "fabric" as defined in said last named Act, consisting of wood fiber square sheets and pre-cut wood fiber flower petals, which failed to conform to an applicable standard or regulation promulgated under the provisions of said last named Act, and which wood fiber square sheets and pre-cut wood fiber flower petals were intended for use or which could reasonably be expected to be used as articles of wearing apparel.

FEDERAL TRADE COMMISSION DECISIONS

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Through counsel, the respondents answered the complaint, admitting that they are engaged in the sale at retail of creative arts materials and, at one time in the past, sold a small quantity of wood fiber square sheets and pre-cut wood fiber flower petals which had been purchased in good faith from Ramont's (California Floral Arts Co.) by a corporation previously engaged in the same line of business prior to the acquisition of its assets by respondent CCM: Arts & Crafts, Inc.; that, in 1961, the Commission issued a consent order against Ramont's in Docket No. 8217, involving the same practices and products as those complained about in the present proceeding, which order, had it been enforced, would have obviated the institution of the instant complaint. Respondents further answered that, when they were informed by representatives of the Commission that there was some question as to the flammability of some of the wood fiber square sheets and pre-cut wood fiber flower petals in respondents' stock on hand, corporate respondent voluntarily removed all pieces of said merchandise from its inventory shelves and permanently discontinued the sale of wood fiber square sheets and pre-cut wood fiber flower petals entirely. Furthermore, respondents alleged that, at great expense, they attempted to notify, by registered mail and telephone, all customer purchasers of said wood fiber square sheets and pre-cut wood fiber flower petals of the possible flammability of some of such merchandise and recall the same. Respondents further represent that they have at all times cooperated with representatives of the Commission during their investigation of this matter, and that, for all of these reasons, the complaint should be dismissed.

A hearing has been held, at which time evidence was offered in support of, and in opposition to, the allegations of the complaint. The facts are largely undisputed. Proposed findings of fact, conclusions of law, and a proposed order have been submitted by counsel. These have been considered. All requested findings of fact and conclusions of law not found or concluded herein are denied.

Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondent, CCM: Arts & Crafts, Inc., is a corporation organized under the laws of the State of Delaware (admitted in Answer), with its office and place of business located at 9520 Baltimore Avenue, College Park, Maryland (Tr. 30-31).

2. The individual respondent, Charles Ellerin, is president of the corporate respondent (Tr. 31); Albert Ellerin is vice-president (Tr. 36); and Eric Beissinger is assistant controller thereof (Tr. 36, 52). Their business addresses are the same as that of the corporate respondent, and they formulate, direct and control the acts, practices, and policies of said corporation (Answer).

3. For more than twenty years, the individual respondent, Charles Ellerin, was president of Arts and Crafts Materials Corporation (the predecessor of the corporate respondent herein), which had been incorporated under the laws of the State of Maryland. It was engaged in the retail sale (Tr. 56) of art and handicraft materials and supplies to schools and, to a limited extent, the general public (Tr. 37). In August 1968, Crowell Collier and MacMillan, Inc. purchased the assets of Arts and Crafts Materials Corporation and formed a new corporation, the respondent, CCM: Arts & Crafts, Inc. (Tr. 31). The assets of Arts and Crafts Materials Corporation were transferred to the new corporation, respondent CCM: Arts & Crafts, Inc., and CCM has continued the same line of business formerly engaged in by Arts and Crafts Materials Corporation. The corporate name of Arts and Crafts Materials Corporation was changed and it became a holding company (Tr. 32-33). Wood fiber square sheets and pre-cut wood fiber flower petals were just two of the approximately 16,000 items of arts and crafts materials formerly carried in stock by respondent CCM (Tr. 44). The individual respondent, Charles Ellerin, has continued to serve as president of the new corporation, respondent CCM: Arts & Crafts, Inc., which has since been operated as a subsidiary of Crowell Collier and MacMillan, Inc. (Tr. 30-32). For economy reasons, respondent CCM: Arts & Crafts, Inc. continued to utilize some of the old stationery, including invoices, which has been used by Arts and Crafts Materials Corporation, bearing its printed name and address. In some instances, a rubber stamp may have been used to indicate the change in name (Tr. 33-35).

4. The circumstances which led to the issuance of the complaint in this proceeding were the following: The Commission, being concerned about the possible flammability of wood fiber products sold by arts and crafts hobby shops, including those located in the Washington, D.C. metropolitan area, instructed certain members of its staff to inspect the wood fiber products offered for sale in these shops to determine whether said products conformed to the applicable standards for flammability prescribed by the Flammable Fabrics Act. Pursuant to these instructions, Mr. George J. Miller, an

Attorney-Advisor, Division of Textiles and Furs, Federal Trade Commission, visited CCM's store in College Park, Maryland, on July 25, 1969, and inquired if CCM handled wood fiber products. The individual respondent, Eric Beissinger, assistant controller at CCM, informed Mr. Miller that CCM carried the item but only sold a small amount (less than \$2,000 worth in 1968 and 1969 [Tr. 67, 131]) of wood fiber products which it had purchased from Ramont's of California (Tr. 130-131). On this first visit to the CCM store, Mr. Miller obtained one package of Ramont's chips marked "flame proofed," which he marked for identification and delivered to his superiors at the Federal Trade Commission (Tr. 134).

5. One week later, on July 31, 1969, Mr. Miller again visited the CCM store, this time accompanied by Mr. Abraham Shapiro, another investigator in the employ of the Federal Trade Commission. On this visit, Mr. Miller requested of Mr. Beissinger some additional samples of the wood fiber square chips held in stock for sale by CCM, and Mr. Beissinger led Mr. Miller and Mr. Shapiro into CCM's warehouse in the back part of the retail store where the wood fiber square chips were stored in bins¹ (Tr. 132). Mr. Beissinger told Mr. Miller and Mr. Shapiro to take any samples they wished (Tr. 133). Up to that date, July 31, 1969, representatives of the Federal Trade Commission had not made any tests of CCM wood fiber square chips for flammability (Tr. 134). Mr. Miller had observed that the wood fiber square sheets and pre-cut wood fiber flower petals were contained in packages, some of the packages being marked "flame resistant," and some packages did not bear this marking (Tr. 137). When Mr. Miller informed Mr. Beissinger that some of the packages containing wood fiber square sheets were not marked "flame resistant," Mr. Beissinger replied that he was not aware of this, "that it was a slow moving item," and that respondents were thinking of discontinuing the sale of this item (Tr. 138). Mr. Miller testified that the purpose of his second visit to the CCM store on July 31, 1969, was to obtain some samples of what he characterized as the "old stock" of wood fiber square sheets from CCM's warehouse bins. Mr. Miller testified that the "old stock" did not contain the marking

¹ CCM's store is the equivalent of a catalogue showroom. The approximately 16,000 items of merchandise carried by CCM and listed in its catalogue by number are kept in numbered bins in the warehouse in the rear of the store. The customer selects the item for purchase from the catalogue, notifies the sales clerk of the number of the item as listed in the catalogue and the sales clerk goes to the corresponding numbered bin in the warehouse and obtains the article of merchandise selected by the customer and delivers it to the customer. The customer then pays for the merchandise and the sale is completed. On mail-order purchases, the purchaser also selects the item for purchase from CCM's catalogue by number, mails the order to CCM, and the merchandise is shipped to the purchaser by mail or freight.

"flame resistant" (Tr. 141). Mr. Miller took with him samples of the "old stock" of wood fiber square sheets. These were received in evidence as CX 2, 4, 6, 8, 10, 12, 14, 16, and 18 (Tr. 135). Subsequently, on August 7 and August 8, 1969, these wood fiber products were tested for flammability under Commercial Standard 191-53 (CX 63)² by a textile technologist employed by the Federal Trade Commission, Mrs. Arlene Sue Rosenberg, and found to be of Class 3 flammability. Under the Commercial Standards, Class 3 is characterized as "rapid and intense burning" (CX 3, 5, 7, 9, 11, 13, 15, 17, 19, and 83; Tr. 149, 152-153). Mrs. Rosenberg further testified, among other things, that the critical time for determining whether a specimen of plain surface fabric is or is not dangerously flammable is whether the fabric burns in less than 3½ seconds from the time the fabric is exposed to a flame (Tr. 155).

6. Mr. Shapiro, who accompanied Mr. Miller to CCM's store on July 31, 1969, testified, among other things, that, pursuant to his official duties as an employee of the Federal Trade Commission, he visited the store of the Vienna Family Hobby Center, 120 Branch Road, Southeast, Vienna, Virginia, on July 25, 1969, and obtained two or three packages of wood fiber square sheets (CX 85) from Mrs. Muriel Emery, part owner and manager of the Vienna Family Hobby Center (Tr. 97, 146), which he forwarded to the Textile and Fur Division of the Federal Trade Commission for testing for flammability (Tr. 147). These wood fiber square sheets had been purchased by the Vienna Family Hobby Center from CCM's predecessor, Arts and Crafts Materials Corporation, in 1967. Arts and Crafts Materials Corporation had also purchased the wood fiber square sheets from Ramont's of California (CX 1; Tr. 98-99). This was prior to the incorporation of respondent CCM. Tests for flammability of samples from these packages of wood fiber square sheets, made on July 24, 1970, showed them to be of Class 3 flammability (CX 86).

7. In support of their contention that the wood fiber products here involved may properly be classified as fabric, complaint counsel offered the testimony of Mr. Samuel Joseph Golub, A.B., M.A., and Ph.D in biology and plant morphology, who, at the time of the hearing, was assistant director at Fabric Research Laboratories in Dedham, Massachusetts. Dr. Golub testified, among other things, that, in his opinion, the wood fiber square sheets and pre-cut wood fiber

² The pertinent provisions of Commercial Standard 191-53, received in evidence as CX 63, prescribes the standards and procedure for testing the flammability of clothing and textiles intended to be used for clothing.

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flower petals in evidence in this proceeding are fabric (Tr. 122, 125). On cross-examination, Dr. Golub testified that it is the use to which the wood fiber material is put, rather than its chemical structure, which led to his opinion that the wood fiber material here involved is fabric (Tr. 126).

8. It is the theory of complaint counsel that the wood fiber square sheets and pre-cut wood fiber flower petals (CX 2, 4, 6, 8, 10, 12, 14, 16, and 18) obtained by Mr. Miller from CCM and those obtained by Mr. Shapiro from the Vienna Family Hobby Center (CX 85) are "fabric" and a "product" as defined in the Flammable Fabrics Products Act, and are intended for use or may reasonably be expected to be used as an article of wearing apparel. Therefore, the standards and procedure prescribed in Commercial Standard 191-53 for testing the flammability of clothing and textiles intended to be used for clothing are appropriate and valid for testing the flammability of the wood fiber products involved in this proceeding.

9. It is undisputed that all of the wood fiber square sheets and pre-cut wood fiber flower petals involved in this proceeding were purchased from California Floral Manufacturing Company (Ramont's) (CX 23; Tr. 42, 55). Wood fiber square sheets and pre-cut wood fiber flower petals are used principally for making collages, such as artificial flowers for table decorations, according to Mr. Charles Ellerin, president of CCM. Within his knowledge these wood fiber products were never sold by CCM to be used as articles of wearing apparel (Tr. 45, 48). Mr. Beissinger testified, among other things, that the wood fiber square sheets are not a durable material, and not adaptable for use more than one time (Tr. 83). He further testified that, during the time CCM was selling the wood fiber products (August 1968, to August 1969), he was not aware that anyone was using them as articles of wearing apparel (Tr. 67). However, there was testimony by a former employee of the Youth Opportunity Service, D.C., that, in the summer of 1969, she purchased some wood fiber square sheets from CCM for use in teaching children (six to 14 years of age) at St. John's Church to make boutonnieres and corsages for presentation to their parents at a birthday party at the Church (Tr. 106-111). Although the witness characterized the articles as boutonnieres and corsages, there was no evidence that the boutonnieres and corsages were ever worn by the parents or anyone else as an article of wearing apparel.

10. The evidence is undisputed that, following Mr. Miller's first visit to CCM on or about July 25, 1969, Mr. Beissinger notified CCM's school materials office, located in Chicago, of Mr. Miller's

visit. As a result of Mr. Miller's second visit on or about July 31, 1969, Mr. Beissinger received a telephone call from one of the vice-presidents of CCM in the Chicago office, instructing him to remove the wood fiber products from CCM's shelves and discontinue their sale. Also, Mr. Beissinger was instructed to remove the listing of wood fiber products from CCM's catalogue. These instructions from CCM's vice-president were carried out. The wood fiber products were physically removed from CCM's shelves or bins in its warehouse and the listing of wood fiber products was removed from CCM's catalogue. As a result, CCM has not sold any wood fiber products since August 1969 (Tr. 53, 71, 74; RX 1).

11. These were not the only steps that CCM took to prevent any harmful effects from the improper use of the untreated wood fiber products which Arts and Crafts Materials Corporation may have sold to customers prior to the transfer of its assets to CCM in August 1968, and also those products which CCM may have sold to customers since that date. CCM decided to attempt to ascertain the identity of the purchasers of the untreated wood fiber products and, if possible, to recall those wood fiber products which remained in the hands of the purchasers. An auditor was sent from the New York office of CCM to determine the magnitude of the job. Mr. Beissinger employed three temporary employees in Baltimore and three in College Park to go through and examine approximately 70,000 sales invoices in an effort to locate the name and address of purchasers of wood fiber square sheets and pre-cut wood fiber flower petals from Arts and Crafts Materials Corporation and CCM over a period of almost two years (Tr. 70-71). This was a formidable and tedious task, and extended over a period of two weeks. Mr. Beissinger worked actively on this project (Tr. 72). RX 2A through RX 2N is a list of the customers of Arts and Crafts Materials Corporation and CCM to whom recall letters were sent on or about September 15, 1969, by registered mail, return receipt requested (Tr. 75). If no reply was received within ten days or two weeks following the mailing of the original letter, a representative of CCM attempted to reach the customer by telephone. If the customer could not be reached by telephone, a second letter was sent by registered mail, return receipt requested (Tr. 76-77). CX 77 is a copy of the first letter sent to purchasers. The second letter was the same as the first letter, except that the second letter was marked "second request" (Tr. 77). The letter notified the customer of the possible flammability of the untreated wood fiber squares or petals, and warned against their possible danger if used as any form of wearing apparel. Further,

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the letter requested that the customer return for refund or credit any of the wood fiber products remaining on hand, etc. RX 3 is a summary of the responses which CCM received to its recall efforts. The total cost of the recall efforts was estimated to be between \$2,000 and \$3,000 (Tr. 83). By that time, September 1969, all of the wood fiber products sold by CCM and its predecessor, Arts and Crafts Materials Corporation, had been used, destroyed, or returned (Tr. 82-83; RX 3).

12. CCM's gross sales volume of all products for the year 1968 was a little more than \$3,000,000 (Tr. 67). For the year 1969, CCM's gross sales were approximately \$3,400,000 (Tr. 37, 52). At the time of the hearing in December 1970, CCM's gross sales for 1970 were expected to reach \$3,800,000 (Tr. 52). Approximately one-half of CCM's total sales are made within the State of Maryland and one-half outside that state (Tr. 52). Of CCM's total sales for the two years of 1968 and 1969, CCM's total dollars realized from the sale of both "treated" and "untreated" wood fiber square sheets and pre-cut wood fiber flower petals amounted to a total of approximately \$1,408.49, or less than \$2,000 (Tr. 67; RX 4). Thus, it is seen that the sale of wood fiber products constituted less than one-tenth of 1 percent of CCM's total sales for the two years. As a matter of fact, CCM was not incorporated until August 1968 (Tr. 31), and CCM discontinued the sale of wood fiber products in August 1969, and has not sold any since that date (Tr. 53). Therefore, the period during which CCM may have sold wood fiber products was between August 1968 and August 1969, a period of approximately one year, thus reducing the one-tenth of 1 percent proportion of CCM's wood fiber product sales to other product sales still more. During that one-year period, CCM sold approximately \$607.77 worth of wood fiber products (RX 4). Of this amount, a part could have been "untreated" or flammable material and the other part "treated" or flame resistant (Tr. 80-82). In any event, the sale of wood fiber products comprised an infinitesimal portion of CCM's total annual sales during the approximate one-year period in which it was selling wood fiber products.

CONCLUSIONS

Although CCM technically violated the provisions of the Flammable Fabrics Act and the Federal Trade Commission Act, the evidence shows that CCM was not the manufacturer of the wood fiber products involved herein, and its officers named as individual respondents herein were not aware that these products were worn or

would be worn as articles of wearing apparel and did not meet the standards for flammability prescribed by the Flammable Fabrics Act. As soon as CCM became aware that the Commission questioned the possible flammability of the wood fiber products in its stock, CCM voluntarily removed all of these products from its shelves or warehouse bins and discontinued their sale. CCM also removed the listing of wood fiber products from its catalogue. Also, at considerable expense, between \$2,000 and \$3,000, CCM employed extra employees to examine approximately 70,000 sales invoices in an effort to ascertain the name and address of each purchaser of wood fiber products so that recall letters could be sent to these purchasers. Another significant factor in determining the order to be issued herein is the fact that wood fiber square sheets and pre-cut wood fiber flower petals were only two of approximately 16,000 items sold by CCM and listed in its catalogue. Wood fiber products constituted less than one-half of 1 percent of CCM's sales of all its products during the years 1968 and 1969. CCM was not incorporated until the middle of August 1968, and permanently discontinued the sale of wood fiber products in August 1969. Therefore, it is seen that CCM actually only sold wood fiber products for approximately one year. This reduces to a negligible amount the percentage of CCM's wood fiber sales to its total annual sales of other products during the approximate one year period, August 1968 to August 1969. Under ordinary circumstances, sales of products involving such meager amounts would be considered as *de minimis*.

The main purpose of a cease and desist order is to prevent repetition of acts in the future which have been found to be in violation of law and against the public interest. Here CCM voluntarily discontinued the sale of wood fiber products in August 1969, prior to the issuance of the complaint herein, and there is no likelihood that CCM will resume the sale of untreated wood fiber products in the foreseeable future. Wood fiber products constituted a miniscule percentage of CCM's total sales. CCM fully cooperated with the representatives of the Federal Trade Commission during their investigation of this matter. Counsel for CCM do not deny the factual allegations in the complaint, but urge that a cease and desist order against CCM and the individual respondents herein, who are some of the officers of CCM, is not appropriate under the facts and circumstances shown by the record in this proceeding. This hearing examiner is of the opinion that, under all of the facts and circumstances of this case, a cease and desist order should not issue herein, and that the complaint should be dismissed.

Opinion of the Commission

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ORDER

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

By DENNISON, *Commissioner*:

Counsel supporting the complaint in this matter has appealed the initial decision of the hearing examiner which dismissed the complaint. For reasons other than those stated by the hearing examiner, that decision is affirmed.

The material facts in this matter are not disputed, and they can be summarized briefly. Respondents are alleged to have sold in interstate commerce plain square sheets and pre-cut simulated flower petals made of pressed wood fibers. These products are used for various hobby crafts, including the construction of artificial corsages and boutonnieres.

These and some 16,000 other arts and crafts materials had been sold by corporate respondent's predecessor, the Arts and Crafts Materials Corporation, for over 20 years. The individual respondents were the managers and owners of that corporation until August 1968, when its assets were sold to Crowell Collier and MacMillan, Inc. (CCM). A new corporation, the respondent herein, was organized as a subsidiary to conduct the same business, and the individual respondents were retained to supervise the operations.

As might be expected when a small businessman sells his corporation to a larger nationally-based conglomerate organization, the individual respondents were not exactly certain of their new status in the CCM corporate structure. Three years after the acquisition, the confusion attending it has still not cleared completely. The president of the respondent corporation, for example, is unsure of the present corporate structure (Tr. 31-3, 47).^{*} Although the individual respondents conduct the business in much the same manner as they did previously (Tr. 31, 35, 37), the extent of their authority is a question that apparently has not been completely resolved.

At approximately the same time that the ownership and structure of the corporate respondent were being formed into their present shape, a letter was received from the California Floral Manufacturing Company (Ramonts), supplier of the wood fiber products in question (Tr. 62). It contained a warning that the Federal Trade

^{*}As used herein, "Tr." refers to the official transcript of the hearings in Docket No. 8817 held on August 7, and December 8, 1970.

Commission had found that these materials were dangerously flammable. Although that letter temporized on the need to recall the materials from customers and to cease their sale, it was certainly adequate warning to put respondents on notice that there were serious legal problems involved in selling the wood fiber products.

Unfortunately, the effect of this warning was lost in the press of the reorganization of the business taking place at that time, and its full impact was realized only after a visit by representatives of the Federal Trade Commission approximately a year later. When the CCM hierarchy was informed of the visit, a vice president telephoned respondents and ordered them to cease all sales and advertising for sale of the wood fiber materials. In the course of a subsequent second visit from Commission personnel, samples were obtained for testing. They failed to meet the applicable flammability standard set by the Department of Commerce.

The portion of Section 3 of the Flammable Fabrics Act (15 U.S.C. § 1192) relevant here makes it an unfair method of competition and an unfair or deceptive act or practice under the Federal Trade Commission Act to manufacture, sell or offer to sell in interstate commerce any product, fabric, related material or product made of fabric or related material which fails to meet the applicable flammability standard. In turn, the Federal Trade Commission Act empowers the Commission to issue a complaint against those who commit unfair methods of competition and unfair or deceptive acts or practices, "if it shall appear to the Commission that a proceeding * * * would be to the interest of the public" (15 U.S.C. § 45(b)). These two Acts provided the statutory basis for the complaint issued against the respondent.

The hearing examiner found that respondent had "technically violated" these Acts, but dismissed the complaint and issued an initial decision citing several reasons for this disposition. They were: (a) that respondent was not aware that the wood fiber products were used as wearing apparel; (b) that respondent cooperated fully with Commission representatives in recalling the wood fiber products from its customers, an effort which cost respondent approximately \$2,000 to \$3,000; (c) that these items constituted less than one-half of 1 percent of respondent's sales volume, and thus the sales were *de minimis*; and (d) that respondent voluntarily discontinued sale of the wood fiber products. To this list respondent has added the defenses that the sales were in good faith as respondent did not know the wood fiber products were flammable, and that the incident might never have occurred had the Commission properly enforced

a 1961 order against respondent's supplier, Ramonts (see *Cal. Floral Products Mfg. Co.*, Docket No. 8217, 58 F.T.C. 765 (1961)).

While we agree the complaint in this matter should be dismissed, we do not fully accept the hearing examiner's reasons for doing so. The "good faith" claim may be dismissed easily. Respondent contends that it had no knowledge that the wood fiber products could be used to make an item which might be subject to the Act. This argument must fail on an examination of instruction booklets which respondent sold along with those products. Two of these booklets specifically state that wood fiber could be used to make leis and corsages.

The second part of respondent's "good faith" claim is based on a lack of knowledge that the specific products in question were dangerously flammable. Even if respondent had not received the warning letter from Ramonts, its supplier, lack of knowledge in and of itself is not sufficient to make the issuance of an order to cease and desist inappropriate (see, e.g., *Novik & Co., Inc.*, 62 F.T.C. 229 (1963)). The Flammable Fabrics Act is designed to protect the public from risk of injury or death from all sales of hazardous fabrics; liability does not depend upon the state of knowledge of the vendor. In the absence of other strong indications that the public safety will be adequately safeguarded without an order from the Commission, it is well settled that good faith on the part of the seller does not itself constitute a justification for the failure to issue such an order.

In addition, respondent's cooperation with the Commission in conducting a campaign to recall the wood fiber products would normally constitute no significant reason to avoid the issuance of an order. While such action may redound to respondent's credit in a moral sense, it does not alter the fact of the violation in a legal sense. *American Life & Accident Insurance Company v. F.T.C.*, 255 F.2d 289 (8th Cir. 1958), *certiorari denied*, 358 U.S. 875 (1958).

Similarly, the failure of the Commission's previous order against respondent's supplier, Ramonts, to curb that company's violations does not ameliorate respondent's own independent violation of the Flammable Fabrics Act. It is unfortunate that Ramonts continued to supply dangerously flammable fabrics in contravention of the order against it, but the Act nonetheless applies to respondent's sales as well.

The fact that the sale of wood fiber products amounted to less than one-half of 1 percent of respondent's sales does not establish an exemption under the Flammable Fabrics Act either. While a *de*

minimis defense might be acceptable in actions under other types of statutes, that doctrine is wholly inappropriate in matters involving public health and safety. Were even one person gravely injured by wearing a wood fiber corsage which caught fire, the incident could hardly be dismissed because the vendor of the offending materials sold much larger quantities of other products.

Respondent's final argument is that it voluntarily discontinued sales of the offending wood fiber products and that it did so 10 months before the complaint was issued. This action was taken, however, after respondent had been contacted by Commission investigators concerned about the flammability of the items in question. A cease and desist order is designed to protect the public interest in the future, and such an order directed against a discontinued practice is entirely appropriate *if there is no additional reason for the Commission to conclude that the practice will not be resumed at a later date. Hershey Chocolate Corp. v. F.T.C.*, 121 F.2d 968 (3rd Cir. 1941).

It is only the most unusual set of facts which would lead to the conclusion that a cease and desist order is not necessary to safeguard the public in the future where it has been shown that a violation of the Flammable Fabrics Act has occurred. We conclude, however, that such unusual facts are present here. As previously noted, there was considerable disruption attendant to the sale of the Arts & Crafts Materials Corporation to CCM and subsequent disorganization within the corporate hierarchy. Had the letter from Ramonts warning of the flammability of the wood fiber products arrived at any other time, there are strong indications that the matter would have been handled competently and expeditiously. Among those indications are the prompt response of CCM officials in ordering that sales of those materials cease as soon as they were notified of the Commission's investigation and the full cooperation of all respondents in conducting an efficient campaign to recall the materials from customers.

While no one of these factors alone constitutes sufficient reason not to issue a cease and desist order, their combination with the flux in corporate organization at the time the supplier's original notification was sent does present a different and unique situation.

The Commission, therefore, is convinced by the record in this matter as a whole that there is no reason to believe that the corporate and individual respondents will violate the Flammable Fabrics Act in the future. This being the case, we see no useful purpose in

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issuing an order to cease and desist. The decision of the hearing examiner is affirmed and the complaint is accordingly dismissed.

Commissioner MacIntyre abstained from voting in this matter.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having determined, for the reasons stated in the accompanying opinion, that the appeal should be denied and that the initial decision should be modified:

It is ordered, That the initial decision of the hearing examiner be modified by striking therefrom the conclusions beginning with the word "Conclusions" on page 246 and ending with the word "dismissed" on page 247 thereof.

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

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

Commissioner MacIntyre abstaining.

IN THE MATTER OF

RAYMOND C. ENGEL, SR., DOING BUSINESS AS NATIONAL 2ND
CAR OUTLET

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS