

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

Docket C-2157. Complaint, March 1, 1972—Decision, March 1, 1972

Consent order requiring a Miami Beach, Fla., individual selling and distributing wool and textile fiber products, including men's wear, to cease misbranding his wool products and falsely and deceptively advertising his textile fiber products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act, and by virtue of the authority vested in

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it by said Acts, the Federal Trade Commission having reason to believe that Austin H. Burke, an individual formerly doing business as Austin Burke, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939 and 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 Austin H. Burke is an individual, formerly doing business as Austin Burke, Inc., a corporation which was organized, existing and doing business under and by virtue of the laws of the State of Florida.

Respondent was formerly engaged in the sale and distribution of wool and textile fiber products, including men's wear, with the office and principal place of business of Austin Burke, Inc., located formerly at 608 Lincoln Road Mall, Miami Beach, Florida. The present address of the respondent is 2218 Alton Road, Miami Beach, Florida.

PAR. 2. Respondent for some time last past introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by respondent within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the place or country where said products were manufactured.

Among such misbranded wool products, but not limited thereto, were wool products with a label on or affixed thereto which stated predominantly that the wool product was, among other things, "Styled in California," and stating in an inconspicuous place and manner on another part of said product that it was "Made in Japan." Such disclosure had the tendency to mislead purchasers into believing that the wool products were of domestic manufacture.

PAR. 4. Certain of said wool products were further misbranded by respondent in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the rules and regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto was a wool product with a label on or affixed thereto which failed to disclose the percentage of the total fiber weight of the said wool product exclusive of ornamentation not exceeding 5 per centum of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool, when said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondent as set forth above were in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constituted unfair methods of competition and unfair and deceptive acts and practices, in commerce within the meaning of the Federal Trade Commission Act.

PAR. 6. Respondent for some time last past engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale in commerce, and in the transportation or causing to be transported in commerce, and 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 had 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. 7. Certain of said textile fiber products were falsely and deceptively advertised in that respondent in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and to 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 sweaters, shirts, jackets and coats which were falsely and deceptively advertised by means of newspaper advertisements. The aforesaid sweaters, shirts, jackets and coats were described by means of such terms as "Orlon," "Dacron," "Cords" and "Madras" and the true generic names of the fibers contained in such products were not set forth.

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PAR. 8. The acts and practices of the respondent as set forth above in Paragraph Seven were in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

PAR. 9. Respondent some time last past engaged in the advertising, offering for sale, sale and distribution of certain products, in commerce, namely men's wear. In the course and conduct of his business the aforesaid respondent caused some of the said products, when sold, to be shipped from his place of business in the State of Florida to purchasers located in various other States of the United States, and maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 10. Respondent in the course and conduct of his business made statements in a prominent manner on labels affixed to his products that said products were, among other things, "Styled in California," and stated in an inconspicuous manner that said products were "Made in Japan." By means of the aforesaid statements and by overemphasizing the phrase "Styled in California" the respondent represented that his products were made in California. The aforesaid act and practice of overemphasizing the phrase "Styled in California" had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said products were made in the United States.

PAR. 11. Respondent in the course and conduct of his business made certain statements in newspaper advertisements concerning his products. Among and typical of the statements used by respondent to describe his products were such phrases as "Vicuna Toned," "Vicuna Toned Doeskin," and "Chamois Doeskin (Vicuna Finish)." By means of the aforesaid designations, the respondent represented his products as being made of the hair of the vicuna, or chamois. In truth and in fact, such products were not composed of the hair of the vicuna or chamois. The use of such terms by respondent in representing his products had the capacity to mislead and deceive members of the purchasing public into the erroneous belief that they were purchasing products, composed in whole or in part of vicuna, or chamois and such use was false and deceptive.

PAR. 12. Respondent in the course and conduct of his business made certain statements in newspaper advertisements concerning his products. Among and typical of the statements used by the respondent

ent to describe his products were such phrases as "\$125 Mohair Suits," "Imported Mohair Tuxedos" and "\$169 Black Mohair Suits." By means of the aforesaid statements, respondent represented his products to be made entirely of "Mohair." In truth and in fact the aforesaid products were not made entirely of Mohair. The use of the word "Mohair" or any simulation thereof, either alone or in connection or conjunction with any other word or words, without qualification or limitation as to amount, to designate, describe, or refer to any product which is not composed entirely of the hair of the Angora goat had the capacity to mislead and deceive members of the purchasing public into the erroneous belief that the product was composed entirely of hair of the Angora goat and was false and deceptive.

PAR. 13. Respondent in the course and conduct of his business made certain statements in newspaper advertisements concerning his products. Among and typical of the statements used by the respondent to describe his products were such statements as "Buy Direct!! We tailor Most Of Our Clothing in San Diego. You save 20% to 50%." By means of the aforesaid statements the respondent represented that he manufactured most of his own products. Such a statement had the capacity to mislead and deceive members of the purchasing public into the erroneous belief that such purchases were being made directly from the manufacturer and that the purchasers thereof would realize substantial savings thereby. In truth and in fact, the aforesaid statements were false and deceptive in that respondent's products were not manufactured by the respondent but were manufactured and sold to the respondent by unrelated garment manufacturers.

PAR. 14. Respondent in the course and conduct of his business made certain representations in newspaper advertisements concerning his products. Among and typical of the representations used by the respondent to represent his products were such statements as:

PUBLIC NOTICE: Warehouse Sale. Men's Clothing. Most Items comparable to and less than WHOLESALE.

The use of the aforesaid statements implied that the respondent was offering products to the consuming public at prices which were less than the prices paid by the respondent in acquiring products and that savings were afforded to the purchasers of said products. In truth and in fact, many of the alleged "less than wholesale" prices were not "less than wholesale" but, in fact, were in excess of the prices paid for the products by the respondent and savings were not afforded to the purchasers thereof as represented.

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PAR. 15. Respondent in the course and conduct of his business made certain statements in newspaper advertisements. Among and typical of the statements used by the respondent to represent products were such statements as "Regular \$105-\$150, now \$69.00," "Regular \$110, now \$69.00." By means of these aforesaid statements and others of similar import and meaning not specifically referred to herein, respondent falsely and deceptively represented that the prices of such products were reduced from respondent's former prices and the amount of such purported reductions constituted savings to purchasers of respondent's products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondent offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said products were not reduced in price as represented and savings were not afforded purchasers of respondent's products, as represented.

PAR. 16. The aforesaid acts and practices of the respondent, as herein alleged in Paragraphs Ten through Fifteen were all to the prejudice and injury of the public and of the respondent's competitors and constituted unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act.

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent has 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 Austin H. Burke is an individual, formerly doing business as Austin Burke, Inc., a corporation which was organized, existing, and doing business under and by virtue of the laws of the State of Florida.

Respondent was engaged formerly in the sale and distribution of wool and textile fiber products, including men's wear, with the office and principal place of business of Austin Burke, Inc., located formerly at 608 Lincoln Road Mall, Miami Beach, Florida. The present address of the respondent is 2218 Alton Road, Miami Beach, Florida.

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

ORDER

It is ordered, That respondent Austin H. Burke, an individual, formerly doing business as Austin Burke, Inc., a corporation, and respondent's representatives, agents and other employees, directly or through any corporate or other device, in connection with the introduction into commerce, or offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the place or country in which such products are manufactured.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent Austin H. Burke, an individual, formerly doing business as Austin Burke, Inc., a corporation, and respondent's representatives, agents and employees, directly or

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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 falsely and deceptively advertising textile fiber products by making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of a fiber present in the textile fiber product need not be stated.

It is further ordered, That respondent Austin H. Burke, an individual, formerly doing business as Austin Burke, Inc., a corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of men's wear or any of respondent's products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting the country of origin of his products by overemphasis or by giving undue prominence to any words or phrases relating to countries other than that in which the product originated or was manufactured, or in any other manner misrepresenting the country of origin of his products.

2. Describing or otherwise representing his products as "Vicuna Toned," "Vicuna Toned Doeskin," "Vicuna Finish" or "Chamois Doeskin," or words of similar import or meaning, unless such products are in fact, (1) made of hairs, fleece or skin of the animal commonly known and referred to as "Vicuna" or (2) made of the skin of the female deer, an animal commonly known and referred to as Doe; or (3) made from the skin of an

Alpine Antelope commonly known and referred to as Chamois, or from the fleshers or undersplits of sheepskins which have been tanned in oil after splitting.

3. Describing or otherwise representing products as Mohair unless such product is composed entirely of the hair fibers of the Angora goat or failing to set forth the presence of any other constituent fibers in said product in immediate conjunction with and with equal size and conspicuousness in their order of predominance by weight.

4. Representing either directly or indirectly that the respondent manufactures his own products, by the use of such words as "Buy Direct. We Tailor Most of Our Own Clothing in San Diego" or words of similar import or meaning unless and until respondent owns, operates, and directly and absolutely controls manufacturing facilities wherein said products are manufactured.

5. Representing in advertisements, or in any other manner, directly or by implication, by means of the phrase "Most Items Comparable to and Less than WHOLESALE," or any other phrase, term or wording of similar import or meaning that the respondent's products are being offered for sale at a price equal to or less than the price paid for the product by respondent, unless that fact is true.

6. Representing directly or by implication, that any price, whether accompanied or not by descriptive terminology, is the respondent's former price of such product when such price is in excess of the price at which such product has been sold or offered for sale in good faith by the respondent on a regular basis for a reasonably substantial period of time in the recent regular course of business, or otherwise misrepresents the price at which such product has been sold or offered for sale by respondent.

7. Falsely or deceptively representing that savings are afforded to the purchaser of any product or misrepresenting in any manner the amount of savings afforded to the purchaser of the product.

8. Falsely or deceptively representing that the price of any product is reduced.

9. Failing to maintain full and adequate records disclosing the facts upon which any pricing claims are based.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

DIXIE FURNITURE COMPANY, INC., ET AL.

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

Docket C-2158. Complaint, March 1, 1972—Decision, March 1, 1972

Consent order requiring an Atlanta, Ga., firm selling furniture and appliances to cease violating the Truth in Lending Act by failing to use on its installment contracts the terms "cash price," "cash downpayment," "trade-in," "total downpayment," "amount financed" and other terms required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Dixie Furniture Company, Inc., a corporation, and Warren N. Dukes and James W. Dukes, individually, and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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. Dixie Furniture Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 457 Edgewood Avenue, Southeast, Atlanta, Georgia.

Respondents Warren N. Dukes and James W. Dukes are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale of furniture and appliances to the public.

PAR. 3. In the ordinary course and conduct of their business, as aforesaid, respondents, in order to facilitate the sale of furniture and appliances, regularly extend consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.