

Consent order requiring a Maalean, Fla., marketer of ladies hosiery and related products,
among other things to cease misbranding and mislabeling its textile fiber products;

failing to maintain records as provided for by statute; furnishing false guaranties, misrepresenting their business status through misleading corporate name; misrepresenting foreign manufactured products as being domestically produced; and failing to mark products as "seconds" or "irregulars" when such is the case.

Appearances

For the Commission: *Herbert L. Stewart.*

For the respondents: *David L. Tobin, Fuller, Brumer, Moss & Cohen, Miami, Fla.*

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 Atlantic Hosiery Mills, Inc., a corporation, also doing business as Grabco Mills Sales, and Ruben Kloda, individually and as an officer of Atlantic Hosiery Mills, Inc., 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 Atlantic Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. The respondent corporation maintains its main offices and principal place of business at 1655 West 31st Place, Hialeah, Fla.

Respondent Ruben Kloda is an officer of said corporation. He assists in formulating, directing and controlling the practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondents are engaged in the business of purchasing ladies' hosiery, and related products, substantial quantities of which are known in the trade as "irregulars," "seconds," or "thirds," depending upon the nature of the imperfection. They cause such hosiery to be examined for defects, repaired where possible, and dyed if needed. The hosiery is then packaged in individual containers or envelopes for sale to other wholesalers, and to retailers who in turn sell it to the purchasing public.

COUNT I

Alleging violation of the Textile Fiber Products Identification Act and the implementing rules and regulations promulgated thereunder, and of the Federal Trade Commission Act, the allegations of Paragraph One

hereof are incorporated by reference in Count I as if fully set forth verbatim.

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.

PAR. 3. 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, namely ladies' hosiery, with labels affixed by Atlantic Hosiery Mills, Inc., which failed to disclose the true generic names of the fibers present.

Also among such misbranded textile fiber products were hosiery offered by Atlantic Hosiery Mills, Inc., which did not have labels affixed thereto disclosing:

1. The percentages of the fibers present by weight.
2. 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.
3. The true generic names of the fibers present in the order of predominance by weight.
4. If it is an imported textile fiber product, the name of the country where processed or manufactured.

PAR. 4. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act, have 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 therefore labels conforming to Section 4 of said Act and in the manner prescribed by Section 5(b) of said Act.

PAR. 5. Respondents, in substituting a stamp, tag, label, or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act, have 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 products were secured in violation of Section 6(b) of said Act.

PAR. 6. Respondents have furnished their customers with false guaranties that certain of the textile fiber products were not misbranded or falsely invoiced by falsely representing in writing on invoices that respondents have filed a continuing guaranty under the Textile Fiber Products Identification Act with the Federal Trade Commission in violation of Rule 38(d) of the rules and regulations under said Act and Section 10(b) of such Act.

PAR. 7. The acts and practices of respondents as set forth above were, and are, in violations 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

Alleging violations of Section 5 of the Federal Trade Commission Act, the allegations of Paragraph One, hereof, are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 8. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, to be shipped from their place of business in the State of Florida 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, variously on their sales invoices and elsewhere, refer to the corporate respondent as "Atlantic Hosiery Mills, Inc." and "Grabco Mills Sales," thus stating or implying that said corporate respondent functions as a mill to manufacture the products which it sells. In truth and in fact, while the corporate respondent may perform a part of the functions normally performed by a mill, such as dyeing, boarding, sizing

and packaging of hosiery, such corporate respondent does not own or control any knitting machines, nor does it function as a mill, or otherwise own, operate or directly and absolutely control a mill. Thus, the aforesaid representations are false, misleading, and deceptive.

PAR. 11. There is a preference on the part of many members of the public to buy products directly from mills or factories in the belief that by doing so certain advantages accrue to them, including lower prices.

PAR. 12. In the course and conduct of their business, the aforesaid respondents, variously on their labels and elsewhere, have referred to their products as "Made in America—The American Way," thus stating or implying that the products contained therein are, in fact, manufactured within the United States. In truth and in fact, substantial quantities of hosiery described in that manner are imported into the United States. Thus, the aforesaid representations are false, misleading, and deceptive.

PAR. 13. There is a preference on the part of many members of the public to buy products which are made in the United States in the belief that by doing so certain advantages accrue to them.

PAR. 14. Respondents did not, in each applicable instance, mark their said ladies' hosiery in a clear, conspicuous manner to disclose that they were "irregulars," or "seconds," so as to inform purchasers thereof of its imperfect quality. The purchasing public, in the absence of markings showing that hosiery products are "irregulars" or "seconds," understands and believes that they are of perfect quality. Respondents' failure to mark or label their products in such a manner as will disclose that said products are imperfect, has had, and now has, the capacity and tendency to mislead dealers and members of the purchasing public into the erroneous and mistaken belief that said products are perfect quality products and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

Official notice is hereby taken of the fact that, in connection with the sale or offering for sale of imperfect hosiery, the failure to disclose on such hosiery products that they are "irregulars" or "seconds," as the case may be, is misleading, which official notice is based upon the Commission's accumulated knowledge and experience, as expressed in Rule 4 of the Commission's amended Trade Practice Rules for the Hosiery Industry promulgated Aug. 30, 1960 (amended June 10, 1964).

PAR. 15. 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 dealers and other purchasers into the erroneous and mistaken belief that such statements and representations were, and are, true, and into the purchase of substan-

tial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 16. The aforesaid acts and practices of respondents, as herein alleged in Paragraphs Ten through Fifteen, 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 Atlanta Regional Office 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 the charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedures 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 Atlantic Hosiery Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida. Its offices and principal place of business are located at 1655 West 31st Place, Hialeah, Fla.

Respondent Ruben Kloda 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 Ruben Kloda is the same as 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

COUNT I

It is ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising or offering for sale, 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:

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. Removing or mutilating, or causing or participating in the removal or mutilation of, the stamp, tag, label or other identification required by the Textile Fiber Products Identification Act to be affixed to any textile fiber product, after such textile fiber product has been shipped in commerce, prior to the time such textile fiber product is sold and delivered to the ultimate consumer without substituting therefor labels conforming to Section 4 of said Act and the rules and regulations promulgated thereunder and in the manner prescribed by Section 4(b) of the Act.

C. Failing to maintain and preserve, as required by Section 6(b) of the Textile Fiber Products Identification Act, such records of the fiber content of textile fiber products as will show the information set forth on the stamps, tags, labels or other identification removed by respondents, together with the name or names of the person or persons from whom such textile fiber products were received, when substituting stamps, tags, labels or other identification pursuant to Section 5(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division 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.

COUNT II

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division 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. Directly or indirectly using the word "Mills" or any other word or term of similar import or meaning in or as a part of respondents' corporate or trade name or representing in any other manner that respondents perform functions of a mill or otherwise manufacture or process the products sold by them unless or until respondents own, operate, or directly or absolutely control the mill, factory or manufacturing plant wherein said products are manufactured.
2. Misrepresenting in any manner that respondents own, operate or control mills, factories or manufacturing plants where their products are manufactured.
3. Misrepresenting, in any manner, by disclosing on labels, packages, advertisements, or elsewhere, that such products are "Made in America," or through use of terms of like import, unless

such products, in truth and in fact, are made in the United States.

It is further ordered, That respondents Atlantic Hosiery Mills, Inc., a corporation, its successors and assigns, also doing business as Grabco Mills Sales, or any other name, and its officers, and Ruben Kloda, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale or distribution of hosiery or other related "industry products," which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 C.F.R. Section 152.4(c)), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking thereon the words "irregular" or "second," as the case may be, in such degree of permanency as to remain on the product until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product unless it is disclosed therein that such article is an "irregular" or "second," as the case may be.

C. Using the words "finest quality" or words of similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

D. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Atlantic Hosiery Mills, Inc., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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

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It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of proposed respondents engaged in the offering for sale, or sale, of any product or in any aspect of preparation, creation, or placing of advertising, and that proposed respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents 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.
