

Complaint

88 F.T.C.

IN THE MATTER OF
SHERRY MANUFACTURING COMPANY, INC., ET AL.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER
PRODUCTS IDENTIFICATION ACTS

Docket C-2844. Complaint, Oct. 1, 1976—Decision, Oct. 1, 1976

Consent order requiring a Miami, Fla., textile fiber products manufacturer, among other things to cease misrepresenting the quality of its products; misbranding and mislabeling its textile fiber products; and removing required labels from items without substituting other specified labels.

Appearances

For the Commission: *Albert Posnick.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 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 Sherry Manufacturing Company, Inc., a corporation, and Quentin Sandler, 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 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 Sherry Manufacturing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business located at 3287 N.W. 65th St., Miami, Florida.

Respondent Quentin Sandler is an officer of said corporation. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business 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 business of purchasing textile fiber products including, but not limited to, piece goods, jacquard woven beach towels, first quality and irregular white beach towels and white T-shirts; screen-printing some of said textile fiber products, such as the first quality and irregular white beach towels and the white T-shirts; manufacturing an

assortment of swim and beach apparel from the piece goods; selling all their products to retailers who resell them to the ultimate consumer.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count I as if fully set forth verbatim.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause and for some time last past have caused their said merchandise to be sold and shipped from their place of business located in the State of Florida to purchasers 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 merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, respondents have sold substandard towels which were not labeled or marked "irregulars" or "seconds" or labeled or marked in any other manner so as to inform purchasers thereof of their imperfect quality. Purchasers, in the absence of a label or mark showing that textile fiber products are "irregulars" or "seconds," understand and believe that they are of first quality.

PAR. 5. Respondents' failure to label or mark their products in such a manner as to disclose that said products are imperfect has had, and now has, the capacity and tendency to mislead retailers and members of the purchasing public into the erroneous and mistaken belief that said products are first quality products and causes the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts or practices of respondents as herein alleged were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation of the Textile Fiber Products Identification Act, the implementing rules and regulations promulgated thereunder, and the Federal Trade Commission Act, as amended, the allegations of Paragraphs One and Two hereof are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 7. Respondents are now and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported, or 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, or 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. 8. 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 or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name and amount of constituent fibers contained therein.

Such misbranded textile fiber products include, but are not limited to, women's beach jackets which contained substantially different fibers than represented on the label and in advertisements.

PAR. 9. 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 prescribed by the rules and regulations promulgated under said Act.

Such misbranded textile fiber products include, but are not limited to, beach towels which were not stamped, tagged or labeled so as to disclose the true generic names and percentages by weight of the fibers present.

PAR. 10. Certain of said textile fiber products were misbranded by respondents in that fiber trademarks were placed on labels without the generic names of the fibers appearing on such labels in immediate conjunction therewith in violation of Rule 17(a) of the rules and regulations promulgated under the Textile Fiber Products Identification Act.

Such misbranded textile products include, but are not limited to, "sleeveless maxis" which were labeled with the fiber trademark "Arnel" without disclosing the generic name "triacetate."

PAR. 11. Certain of said textile fiber products were falsely or deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of said products, failed to set

forth the information as to fiber content required by Section 4(c) of the Textile Fiber Products Identification Act in the manner and form prescribed by the rules and regulations promulgated under said Act.

Such textile fiber products include, but are not limited to, ladies' "hooded maxis" which were falsely or deceptively advertised by means of catalogues distributed by respondents throughout the United States in that the true generic names of the fibers in such articles were not set forth.

PAR. 12. Respondents, in violation of Section 5(a) of the Textile Fiber Products Identification Act, have caused or participated in the removal of, prior to the time textile fiber products subject to the provisions of said Act were sold and delivered to the ultimate consumer, labels required by said Act to be affixed to such products, without substituting therefor labels or other means of identification in the manner prescribed by Section 5(b) of said Act.

PAR. 13. 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 or practices in or affecting commerce under the Federal Trade Commission Act, as amended.

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, as amended, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Sherry Manufacturing Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 3287 N.W. 65th St., Miami, Florida.

Respondent Quentin Sandler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above-stated address.

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

I

It is ordered, That respondents Sherry Manufacturing Company, Inc., a corporation, its successors and assigns, and its officers, and Quentin Sandler, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, selling or distributing of towels or any other article of merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Offering for sale, selling or distributing any such product which is less than first quality without clearly and conspicuously marking thereon the word "irregular" or "second" in such degree of permanency as to remain on the product until consummation of the sale to the consumer and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using any advertisement or promotional material in connection with the offering for sale of any such product which is less than first quality unless it is clearly and conspicuously disclosed therein that such article is an "irregular" or "second" as the case may be.

C. Misrepresenting in any manner the quality of such product.

II

It is further ordered, That respondents Sherry Manufacturing

Company, Inc., a corporation, its successors and assigns, and its officers, and Quentin Sandler, individually and as an officer of said corporation, and respondents' agents, representatives 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 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:

A. Misbranding textile fiber products by:

1. falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name and 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; and
3. using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness.

B. Falsely and deceptively advertising textile fiber products by making any representations, by disclosure or by implication, as to the 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 Sections 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

C. Causing or participating in the removal of labels required by the Textile Fiber Products Identification Act, without substituting therefor labels or other means of identification in the manner prescribed by Section 5(b) of said Act.

III

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 notify the Commission at least thirty (30) days prior to any proposed 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 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. In addition, for a period of ten (10) years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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.

Commissioner Dole did not participate by reason of absence.

IN THE MATTER OF
WARNER-LAMBERT COMPANY

OPINION AND ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

*Docket 8850. Complaint, June 30, 1971—Final Order, Oct. 5, 1976**

Opinion and order requiring a Morris Plains, N.J., major industrial corporation and a leading manufacturer and seller of drugs, to partially divest itself of particular assets whose retention would substantially lessen competition in drug manufacturing submarkets relating to thyroid preparations, cough medications, serum albumin and tetanus immune globulin; and to furnish the necessary assistance to enable respective purchasers to become effective competitors in these submarkets. Additionally, the order bans further acquisitions by respondent in the particular product areas for ten years without prior F.T.C. approval.

Appearances

For the Commission: *Thomas P. Athridge.*

For the respondent: *Mudge, Rose, Guthrie & Alexander*, New York City, and *Bergson, Borkland, Margolis & Adler*, Washington, D.C.

OPINION ACCOMPANYING FINAL ORDER

In the Commission's decision of April 27, 1976 in this matter, it found that the acquisition of Parke, Davis & Company ("Parke, Davis") by Warner-Lambert Company ("Warner-Lambert") violated Section 7 of the Clayton Act (15 U.S.C. § 18) in five therapeutic product submarkets: thyroid preparations, cough remedies, cough drops and lozenges, normal serum albumin, and tetanus immune globulin. At the same time, the Commission ruled that no violation of Section 7 had been demonstrated in seventeen other asserted lines of commerce, including an alleged overall drug market and an ethical drug market segment thereof.¹

In view of the fact that the lines of commerce in which the Commission found Section 7 violations accounted for only a small portion of Parke, Davis' sales (less than 5 percent of total sales for 1969, the year prior to the merger),² it did not enter an order requiring divestiture of Parke, Davis, but called for proposed orders and supplemental briefs addressed to the issue of "what relief is necessary and sufficient to restore competition in the submarkets in which violations have been found" (Comm. Op. p. 50). The Commission noted

* For the Complaint, Initial Decision, Opinion, Findings of Facts and Conclusions of Law, see 87 F.T.C. 812.

¹ The complaint originally alleged unlawful effects in some 55 lines of commerce. A majority of the lines of commerce dropped out of the case by the time the matter reached the Commission for final decision.

² Total sales of Parke, Davis in 1969 were \$273 million. Sales in the affected submarkets were as follows: thyroid preparations—\$837,000; cough remedies (including cough drops and lozenges)—\$8,771,000; normal serum albumin \$2,400,000; tetanus immune globulin—\$701,000. (Comm. Find. 51, 64; Comm. Op. p. 4, 46).