

Complaint

IN THE MATTER OF
CEZAR, LTD., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TEXTILE FIBER
PRODUCTS IDENTIFICATION ACTS*Docket C-2873. Complaint, Mar. 14, 1977 — Decision, Mar. 14, 1977*

Consent order requiring a New York City importer and manufacturer of men's and boys' shirts, among other things to cease violating the Textile Fiber Products Identification Act by misbranding textile fiber products and failing to maintain required records.

Appearances

For the Commission: *Martin Gorman.*
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 Cezar, Ltd., a corporation, and William Arnold, individually and as an officer of said corporation, hereinafter sometimes 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 thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Cezar, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 232 Madison Ave., New York, New York.

Respondent William Arnold is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondents are now, and for some time last past have been, engaged in the importation and sale of textile fiber products including but not limited to men's shirts.

PAR. 2. Respondents are now and for some time past have been engaged in the introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's shirts, stamped, tagged, labeled or otherwise identified by respondents as "polyester and cotton" whereas in truth and in fact, said products contained polyester and rayon.

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

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products, namely men's shirts, with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers by weight.

PAR. 5. Certain of said textile fiber products were misbranded by respondents in that fiber trademarks were placed on labels without the generic names of 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.

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

PAR. 7. The acts and practices of respondents as set forth above

were, and are, in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in or affecting commerce within the intent and meaning of 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 New York 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 Act, 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 Cezar, Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 232 Madison Ave., New York, New York.

Respondent William Arnold is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent and his address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Cezar, Ltd., a corporation, its successors and assigns and its officers, and William Arnold, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the 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, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:
 - a. falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to the name or amount of the constituent fibers contained therein;
 - b. 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;
 - c. 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.
2. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Rules and Regulations promulgated thereunder.

It is further ordered, That respondents 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 each change in business or employment status, which includes discontinuance of his present business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provisions of this paragraph shall not affect any other obligations 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.

Order

89 F.T.C.

IN THE MATTER OF

SPIEGEL, INC.

Docket 8990. Interlocutory Order, Mar. 22, 1977

Denial of respondent's petition for modification of the modified final order.

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent has filed a petition dated Jan. 31, 1977, which asks the Commission to reconsider its order entered Dec. 26, 1976, pursuant to the opinion of the Seventh Circuit Court of Appeals. The Court of Appeals affirmed and enforced "as modified" the Commission's original order to cease and desist entered on Aug. 18, 1975.¹

This proceeding has not been remanded to the Commission. The Court of Appeals enforced the Commission's order "as modified", and in modifying its order the Commission acted ministerially pursuant to the mandate of the Court of Appeals. The Commission's original order prohibited Spiegel from suing a defaulting consumer debtor in a court located elsewhere than in the debtor's home county or in the county wherein the contract sued upon was executed. The court believed this order provision was overly broad, and in its opinion the court stated:

Therefore, we are of the opinion that the Commission's order should not be enforced insofar as it relates to Illinois consumers who are sued in a county courthouse which is a reasonable distance from their place of residence.

In accordance with this explicit instruction, the Commission modified its order to permit suits by Spiegel against Illinois residents in an Illinois county courthouse which is not an unreasonable distance from the consumer's place of residence.

Spiegel now contends that the foregoing language notwithstanding, it was the intention of the Court of Appeals to modify the

¹ Complaint counsel argue that pursuant to Section 5(i) of the FTC Act, 15 U.S.C. 45, the "order of the Commission rendered in accordance with the mandate of the Court of Appeals" shall become final within 30 days from the time such order was rendered, unless either party has "instituted proceedings to have such order corrected." * * * Since more than 30 days have elapsed from the time the Commission's order was rendered, (and had elapsed when Spiegel's petition was filed) counsel argue that the order is final and Spiegel's petition can at best be construed as a petition for reopening. Spiegel purports to petition pursuant to Section 3.55 of the Rules of Practice, which allows petitions for reconsideration of Commission "decisions" to be filed within 20 days of completion of service. We agree that it is desirable that parties apply first to the Commission for modification of what they construe to be an improper implementation of an appellate court mandate. On the other hand, we do not believe that such application for modification constitutes the "institution of a proceeding to have the order corrected," such as would stay finality of the order. In our view Section 5(i) is most fairly read to render modified orders final within 30 days from date of service, unless respondent seeks review in the Court of Appeals, or the order is stayed, and our own rules are best read to allow a petition for reconsideration of a modified order within 20 days, pursuant to Rule 3.55, with the proviso, as the rule notes, that such petition does not stay the effective date of the order. Accordingly we believe the order in this matter has become final, but we shall nonetheless address the substance of petitioner's request.