

IN THE MATTER OF

NIKKI FASHIONS, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT,
THE WOOL PRODUCTS LABELING ACT OF 1939 AND
THE FEDERAL TRADE COMMISSION ACT

Docket C-3404. Complaint, Nov. 13, 1992--Decision, Nov. 13, 1992

This consent order prohibits, among other things, a Massachusetts-based retailer of designer clothing and its owner from selling misbranded textile fiber and wool products, and from selling wearing apparel from which the required labels have been removed or mutilated.

Appearances

For the Commission: *Kristie A. Wood* and *Phoebe D. Morse*.

For the respondents: *Donald M. Bloch, Lane & Altman*, Boston, MA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* (hereinafter "FTC Act"), the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* (hereinafter "TFPI Act"), and the Rules and Regulations promulgated thereunder 16 CFR Part 303, and the Wool Products Labeling Act of 1939, as amended, 15 U.S.C. 68 *et seq.* (hereinafter "Wool Act"), and the Rules and Regulations promulgated thereunder, 16 CFR Part 300, and by virtue of the authority vested in it "by said Acts, the Federal Trade Commission (hereinafter "Commission"), having reason to believe that Nikki Fashions Ltd., a corporation, and Nicolina P. Varrichione, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts, 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 Nikki Fashions Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 328 Worcester Road, Framingham, Massachusetts.

Respondent Nicolina P. Varrichione is sole shareholder and president of the corporate respondent, Nikki Fashions Ltd. She formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Her office and principal place of business are the same as that of said corporate respondent.

PAR. 2. Respondents are engaged in, among other things, the retail sale of women's clothing and accessories that were imported into, or manufactured in, the United States.

PAR. 3. Respondents, now and for some time last past, have sold, offered for sale, advertised, delivered, transported or caused to be transported, after their shipment in commerce, as "commerce" is defined in the TFPI Act, 15 U.S.C. 70 (k), women's dresses, suits, evening gowns, and other clothing that are textile fiber products as "textile fiber product" is defined in the TFPI Act, 15 U.S.C. 70(h)(1)-(h)(3).

PAR. 4. Certain of such textile fiber products, when offered for sale and sold by respondents, were misbranded, as "misbranded" is defined in Sections 4(b)(1), (2), (4), (5) and (j) of the TFPI Act, 15 U.S.C. 70b (b)(1),(b)(2),(b)(4), (b)(5) and (j), and the Rules and Regulations promulgated thereunder, 16 CFR Part 303, in that they did not have on, or affixed to, the inside center of the neck or elsewhere if the product did not contain a neck, a stamp, tag, label, or other means of identification showing the constituent fibers and percentages thereof and/or the name of the country where such products were processed or manufactured. The offering for sale and sale by respondents of misbranded textile fiber products violates Section 3(c) of the TFPI Act, 15 U.S.C. 70a(c).

PAR. 5. Prior to the time certain textile fiber products were sold and delivered to consumers, but after their shipment in commerce,

respondents caused or participated in the removal or mutilation of stamps, tags, labels, or other means of identifying the constituent fiber and percentages of such products and/or the country where such products were processed or manufactured. The removal or mutilation by respondents of stamps, tags, labels, or other means of identification violates Section 5(a) of the TFPI Act, 15 U.S.C. 70c(a).

PAR. 6. The acts and practices of respondents as set forth in paragraphs four and five were, and are, in violation of the TFPI 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 in violation of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PAR. 7. Respondents, now and for some time last past, have introduced into commerce, transported, distributed, delivered for shipment, shipped, offered for sale, or sold in commerce, as "commerce" is defined in the Wool Act, 15 U.S.C. 68(g), women's dresses, suits, evening gowns, and other clothing that are wool products as "wool product" is defined in the Wool Act, 15 U.S.C. 68(d).

PAR. 8. Certain of such wool products, when offered for sale and sold by respondents, were misbranded, as "misbranded" is defined in Sections 4(a)(2)(A), (B), (D) and (f) of the Wool Act, 15 U.S.C. 68b (a)(2)(A), (B), (D) and (f), and the Rules and Regulations promulgated thereunder, 16 CFR Part 300, in that they did not have on, or affixed to, the inside center of the neck or elsewhere if the product did not contain a neck, a stamp, tag, label, or other means of identification showing the constituent fibers and percentages thereof and/or the name of the country where such products were processed or manufactured. The offering for sale and sale by respondents of misbranded wool products violates Section 3 of the Wool Act, 15 U.S.C. 68a.

PAR. 9. Prior to the time certain wool products were sold and delivered to consumers, respondents caused or participated in the removal or mutilation of stamps, tags, labels, or other means of identifying the constituent fibers and percentages of such products and/or the country where such products were processed or manufactured with intent to violate the provisions of the Wool Act. The removal or mutilation by respondents of stamps, tags, labels, or

other means of identification violates Section 5(b) of the Wool Act, 15 U.S.C. 68c(b).

PAR. 10. The acts and practices of respondents as set forth in paragraphs eight and nine were, and are, in violation of the Wool 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, within the meaning of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

PAR. 11. The clothing offered for sale and sold by respondents, as described in paragraph two, is "textile wearing apparel" as that term is defined in the Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel, 16 CFR Part 423.1(g) (hereinafter "Care Labeling Rule"). When purchased by respondents from manufacturers, importers or other parties, these articles of wearing apparel, in most if not all instances, had attached thereto care labels as required by the Care Labeling Rule.

PAR. 12. Respondents caused or participated in the removal of the care labels attached to certain of these articles of wearing apparel, but failed to reattach the labels or substitute other care labels. Respondents then offered for sale and sold these articles of wearing apparel to consumers.

PAR. 13. As a result of the acts or practices of respondents as set forth in paragraph twelve, consumers were and are likely to be misled, to their detriment, into using improper care procedures that are harmful to the articles purchased from respondents.

PAR. 14. The acts or practices of respondents as set forth in paragraph twelve, constituted, and now constitute, deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

PAR. 15. As a result of the acts or practices of respondents as set forth in paragraph twelve, consumers were and are likely to use improper care procedures that are harmful to the articles purchased from respondents and to experience substantial economic loss from using these procedures. Respondents conduct is not outweighed by any countervailing benefits to consumers or competition and consumers cannot reasonably avoid the economic loss caused by respondents' conduct.

PAR. 16. The acts or practices of respondents as set forth in paragraph twelve, constituted, and now constitute, unfair acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

PAR. 17. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 18. The acts and practices of respondents, as herein alleged, were and are to the prejudice and injury of the public and respondents' competitors. The acts and practices of respondents, as herein alleged, may recur in the absence of the relief herein requested.

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 respondents having been furnished thereafter with a copy of a draft of complaint which the Boston 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, the Textile Fiber Products Identification Act, and the Wool Products Labeling Act of 1939; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 purpose only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules.

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, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, 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. Nikki Fashions Ltd. is a corporation organized, existing, and doing business under the laws of the Commonwealth of Massachusetts. Its office and principal place of business is located at 328 Worcester Road, Framingham, Massachusetts.

Nicolina P. Varrichione is sole shareholder and president of the corporate proposed respondent named herein. Ms. Varrichione formulates, directs and controls the acts or practices of proposed respondent Nikki Fashions Ltd. Her office and principal place of business are the same as that of said corporate proposed 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

I.

It is ordered, That respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, 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 any textile fiber product as "textile fiber product" is defined in the Textile Fiber Products Identification Act, as amended (hereinafter "TFPI Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the TFPI Act, textile fiber products that are misbranded in that they do not have securely affixed to, or placed on, each such product in the location, manner, and form required by the TFPI Act, a stamp, tag, label or other means of identification

correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(b) of the TFPI Act.

II.

It is further ordered, That respondents Nikki Fashions Ltd., a corporation, its successors and assigns, and its officers, and Nicolina P. Varrichione, 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 any wool product as "wool product" is defined in the Wool Products Labeling Act of 1939, as amended (hereinafter "Wool Act"), do forthwith cease and desist from offering for sale, selling, advertising, delivering, transporting or causing to be transported, after shipment in commerce, as "commerce" is defined in the Wool Act, wool products that are misbranded in that they do not have securely affixed to, or placed on, each such product in the location, manner, and form required by the Wool Act, a stamp, tag, label or other means of identification correctly showing, in a clear and conspicuous manner, each element of information required to be disclosed by Section 4(a)(2) of the Wool Act.

III.

It is further ordered, That respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, 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 offering for sale and sale of any textile fiber product, as "textile fiber product" is defined in the TFPI Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the TFPI Act to be affixed to textile fiber products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(b) of the TFPI Act.

IV.

It is further ordered, That respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, 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 offering for sale and sale of any wool product, as "wool product" is defined in the Wool Act, do forthwith cease and desist from removing or mutilating, or causing or participating in the removal or mutilation of, any stamp, tag, label or other identification required by the Wool Act to be affixed to wool products, prior to the time any such product is sold and delivered to the ultimate consumer, without substituting therefor labels conforming to Section 4(a)(2) of the Wool Act.

V.

It is further ordered, That respondents Nikki Fashions Ltd., a corporation, its successors and assigns and its officers, and Nicolina P. Varrichione, 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 offering for sale and sale of any textile wearing apparel, as "textile wearing apparel" is defined in the Commission's Trade Regulation Rule relating to the Care Labeling of Textile Wearing Apparel (hereinafter "Care Labeling Rule"), 16 CFR Part 423, do forthwith cease and desist from removing, or causing or participating in the removal of any label or tag required by the Care Labeling Rule to be affixed to textile wearing apparel, unless respondents reattach such label or tag to the article of wearing apparel, prior to the time any such product is sold and delivered to the ultimate consumer.

VI.

It is further ordered, That respondents shall distribute a copy of this order to all present and future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of said order.

VII.

It is further ordered, That, whenever a stamp, tag, label or other form of identification which shows information required by the TFPI Act or Wool Act is substituted or otherwise removed respondents shall keep records for a period of five (5) years sufficient to show the information set forth on the removed stamp, tag, label, or other form of identification, as well as the name or names of the person or persons from whom such product was received.

VIII.

It is further ordered, That respondents shall, for a period of five (5) years after this order becomes final, maintain and upon request, make available to the Federal Trade Commission for inspection and copying, all documents that relate to the manner and form in which respondents have complied with this order.

IX.

It is further ordered, That the corporate respondent shall, for a period of ten (10) years from the date of this order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Nikki Fashions Ltd., 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 that may affect compliance obligations arising out of this order.

X.

It is further ordered, That the individual respondent shall, for a period of ten (10) years from the date of this order promptly notify the Commission of the discontinuance of her present business or employment and of each affiliation with a new business or employment whose activities include the sale or offer for sale of any type of "textile fiber product," "wool product" or "textile wearing apparel," as those terms are defined in the TFPI Act, the Wool Act and the Care Labeling Rule, respectively, or of her affiliation with a new business or employment in which her own duties and responsibilities involve the sale or offer for sale of any such product. 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.

XI.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, submit a report, in writing, to the Federal Trade Commission setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

HAROLD HONICKMAN, ET AL.

Docket 9233. Show Cause Order, Nov. 16, 1992

ORDER TO SHOW CAUSE

The Commission's final order in this matter requires respondents Harold Honickman and the entities he controls (hereafter collectively "Mr. Honickman"), for a ten year period, to obtain the Commission's prior approval before acquiring certain assets of or rights related to bottling operations in the New York metropolitan area. The order defines "bottling operation" to mean, *inter alia*, an entity that distributes and sells carbonated soft drinks ("CSDs"). Mr. Honickman filed, on October 24, 1991, a Request for a Declaration or in the Alternative for Approval to Obtain Certain Assets of New York Seven-Up ("Application") to acquire, among other things, the Hawaiian Punch and Perrier franchises owned by New York Seven-Up. That Application raises issues concerning whether the Commission's order applies to the acquisition of franchise rights for Hawaiian Punch, Perrier, and other non-CSD products. For the reasons set out below, the Commission is issuing this Order to Show Cause why the final order should not be modified to exclude from the coverage of Paragraph II. the acquisition of the right to distribute or sell non-CSD products.

The Commission's November 2, 1989, complaint charged that Mr. Honickman's acquisition of Seven-Up Brooklyn Bottling Company, Inc., violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, by eliminating competition in the CSD market in certain New York City area counties.¹ After the complaint was issued, but before trial, Mr. Honickman agreed to settle the matter. The consent order was issued

¹ The product markets alleged in the complaint are "branded soft drinks" and "all soft drinks." Complaint ¶ 17. "Soft drink" is defined as "a carbonated soft drink or 'CSD.'" Complaint ¶ 1.n.