

IN THE MATTER OF

UNITED STATES GOLF ASSOCIATION

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

Docket C-3408. Complaint, Jan. 6, 1993--Decision, Jan. 6, 1993

This consent order requires, among other things, a New Jersey-based non-profit corporation to clearly state in all future advertisements and product descriptions in mail order catalogs, and in all mail order promotional material, whether its clothing and other textile-fiber merchandise are manufactured or processed in the United States, or imported, or both. In addition, the respondent is required to use proper generic fiber names, consistent with the Textile Fiber Products Identification Act, and not to mention or imply fiber content of a fiber not present in the product.

Appearances

For the Commission: *Robert Easton and Ronald D. Lewis.*

For the respondent: *Simeon M. Kriesberg, Mayer, Brown & Clatt, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that United States Golf Association, a non-profit corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act and of 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 alleges:

PARAGRAPH 1. Respondent United States Golf Association, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and

principal place of business located at Liberty Corner Road, Far Hills, New Jersey.

PAR. 2. Respondent is now, and for some time past has been, engaged, directly or through licensees, by means of mail order catalogs, in the advertising, offering for sale, sale and distribution of a variety of products in or affecting commerce, including textile wearing apparel and other textile fiber products as "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) (hereafter referred to as the Textile Act). The allegations in this complaint relate to mail order catalogs published prior to June 1991.

PAR. 3. In September 1984 Congress amended the Textile Act to require that catalogs and other mail order promotional material disclose whether textile fiber products offered for sale are imported or domestically produced or both. The amendment states:

Misbranding and False Advertising of Textile Fiber Products

(i) For the purposes of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America; or imported, or both. (15 U.S.C. 70b(i))

PAR. 4. The Commission, pursuant to authority under the Textile Act to make such rules and regulations as may be necessary and proper for the enforcement of the Textile Act (15 U.S.C. 70e), promulgated a rule effective April 17, 1985, relating to country of origin in mail order advertising. Rule 34 states:

When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised. (16 CFR 303.34, as amended)

PAR. 5. Section 4(b) of the Textile Act requires that a label attached to an imported or domestic textile product disclose the identity of the constituent fibers by their generic names. Section 4(c) of the Textile Act states that if fiber content is mentioned or implied in a written advertisement, then the proper generic names as required under Section 4(b) of the Textile Act must be disclosed. Section 4(b) of the Textile Act reads, in part, as follows:

. . . a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefore authorized by Section 5, is not on (1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name . . .

Section 4(c) of the Textile Act reads:

(c) For the purpose of this Act, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made 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 as that required to be shown on the stamp, tag, label, or other identification under Section 4(b) (1) and (2) is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated. (15 U.S.C. 70b(c))

PAR. 6. The Commission, pursuant to authority under the Textile Act to make such rules and regulations as may be necessary and proper for the enforcement of the Textile Act (15 U.S.C. 70e), promulgated Rules 40, 41 and 42 relating to fiber content disclosures in advertising. Rules 40, 41 and 42 read:

Rule 40 - Use of Terms in Written Advertisements
Which Imply Presence of a Fiber.

The use of terms in written advertisements which are descriptive of a method of manufacture, construction, or weave, and which by custom and usage are also indicative of a textile fiber or fibers, or the use of terms in such advertisements which constitute or connote the name or presence of a fiber or fibers, shall be deemed to be an implication of fiber content under Section 4(c) of the Act, except

that the provisions of this section shall not be applicable to non-deceptive shelf or display signs in retail stores indicating the location of textile fiber products and not intended as advertisements.

Rule 41 - Use of Fiber Trademarks and Generic
Names in Advertising.

(a) In advertising textile fiber products, the use of a fiber trademark shall require a full disclosure of the fiber content information required by the Act and Regulations in at least one instance in the advertisement.

(b) Where a fiber trademark is used in advertising textile fiber products containing more than one fiber, other than permissible ornamentation, such fiber trademark and the generic name of the fiber must appear in the required fiber content information in immediate proximity and conjunction with each other in plainly legible type or lettering of equal size and conspicuousness.

(c) Where a fiber trademark is used in advertising textile fiber products containing only one fiber, other than permissive ornamentation, such fiber trademark and the generic name of the fiber must appear in immediate proximity and conjunction with each other in plainly legible and conspicuous type or lettering at least once in the advertisement.

Rule 42 - Arrangement of Information in Advertising
Textile Fiber Products.

(a) Where a textile fiber product is advertised in such manner as to require disclosure of the information required by the Act and Regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount five percentum or more of the total fiber weight of the product together with any fibers disclosed in accordance with Rule 3(b) shall appear in order of predominance by weight, to be followed by the designation other fiber or other fibers if a fiber or fibers required to be so designated be present. [16 CFR 303.42, as amended, effective December 13, 1965.]

PAR. 7. Pursuant to Section 3 of the Textile Act, 15 U.S.C. 70a, violation of that Act and the Federal Trade Commission rules issued thereunder is an unfair method of competition and an unfair and deceptive act or practice under the Federal Trade Commission Act.

PAR. 8. Respondent advertised or offered for sale textile fiber products in mail order catalogs or mail order promotional material

without a clear and conspicuous statement that the products were processed or manufactured in the United States of America, or imported, or both.

PAR. 9. Respondent advertised or offered for sale textile fiber products in mail order catalogs or mail order promotional materials in which fiber content was mentioned or implied in written advertisements, but the generic names were not disclosed.

PAR. 10. Respondent advertised or offered for sale textile fiber products in mail order catalogs or mail order promotional materials in which the manufacturer's trademark "Cashmerlon" was used to describe fiber content when there was no cashmere present.

PAR. 11. Respondent's sale, offering for sale and advertising of textile fiber products in or affecting commerce were in violation of the Textile Act and the Federal Trade Commission rules and regulations promulgated thereunder, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation 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 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 and the Textile Fiber Products Identification Act; and

The respondent, its attorneys, and the 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 that 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 United States Golf Association is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business presently located at Liberty Corner Road, Far Hills, New Jersey.

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

I.

It is ordered, That respondent United States Golf Association, a non-profit corporation, its successors and assigns, trading under its own name or under any other name or names, and its officers, agents, licensees, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms "textile fiber product" and "commerce" are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) ("Textile Act"), do forthwith cease and desist from:

1. Failing to state in the description of such textile fiber product in a clear and conspicuous manner that such textile fiber-product is processed or manufactured in the United States of America, or imported, or both;
2. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Act and the rules and regulations thereunder; and
3. Mentioning or implying fiber content for a fiber which is not present in such textile fiber product.

II.

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

III.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its agents, licensees and representatives acting in connection with the offering for sale, selling or advertising of any textile fiber product in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, in commerce, as the terms “textile fiber product” and “commerce” are defined in the Textile Fiber Products Identification Act (15 U.S.C. 70) (“Textile Act”).

IV.

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

IN THE MATTER OF

MEDICAL MARKETING SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3409. Complaint, Jan. 12, 1993--Decision, Jan. 12, 1993*

This consent order prohibits, among other things, a Florida firm and its founder from misrepresenting in advertising or promotional materials -- with respect to any chemical face peel procedure or any health care service -- the degree of risk, level of pain, recovery period, or results associated with the procedure; any entity's approval or endorsement of the procedure; or any training the respondents provide for the procedure and services.

Appearances

For the Commission: *Richard F. Kelly* and *Renate Kinscheck*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that Medical Marketing Services, Inc., a corporation, and Michael Walerstein, individually and as an officer of Medical Marketing Services, Inc., (hereinafter "respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Medical Marketing Services, Inc. (hereinafter "MMS") is a Florida corporation. Its office and principal place of business was located at 860, Southwest 89th Terrace, Plantation, Florida.

(b) Respondent Michael Walerstein (hereinafter "Walerstein") is the founder, president and sole stockholder of MMS. He directs, controls, and formulates the acts and practices of the corporate