

IN THE MATTER OF
JOCKEY INTERNATIONAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3494. Complaint, May 10, 1994--Decision, May 10, 1994

This consent order requires, among other things, a Wisconsin-based manufacturer of underwear, hosiery, and sportswear to disclose the country where its clothing is made and to use the correct generic fiber name for clothing. The consent order also requires the respondent to distribute copies of the order to each of its employees, agents, licensees and other representatives who are selling or advertising any of its textile products through mail order catalogs and promotional materials.

Appearances

For the Commission: *Robert E. Easton.*

For the respondent: *Charlotte Shapiro*, in-house counsel,
Kenosha, WI.

COMPLAINT

The Federal Trade Commission, having reason to believe that Jockey International, Inc., a 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 Jockey International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business located at 2300 60th Street, Kenosha, Wisconsin.

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 1993.

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)

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 or affixed to the product showing in words and figures plainly legible, the following:

(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 . . . (15 U.S.C. 70b(b))

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, in relevant part, 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 nondeceptive 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 5 per centum or more of the total fiber weight of the product together with any fibers disclosed in accordance with paragraph (b) of Section 303.3 of this part (Rule 3) 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 303.40-42)

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'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 of 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 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 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 respondent has 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 Jockey International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin with its office and principal place of business presently located at 2300 60th Street, Kenosha, Wisconsin.
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 Jockey International, Inc., a 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; and

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.

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 emergence 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 employees, 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.

Modifying Order

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IN THE MATTER OF

SERVICE CORPORATION INTERNATIONAL

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9071. Consent Order, Oct. 12, 1976--Modifying Order, May 12, 1994*

This order reopens the proceeding and modifies the Commission's 1976 consent order by deleting the administrative provisions that required the respondent to distribute a copy of the 1976 order to its funeral homes and affected employees; provide prior notice to the Commission of certain changes in its corporate organization; and periodically notify the Commission regarding the acquisition or sale of any funeral homes. The Commission concluded that these provisions were no longer warranted or were essentially duplicative of requirements in provisions in more recent Commission orders against the respondent and therefore, warranted reopening and modifying the order.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On January 12, 1994, Service Corporation International ("SCI") filed a petition to reopen the proceeding in Docket No. 9071, *Service Corp. Int'l.*, 88 FTC 530 (1976), pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, to modify the order by deleting Parts III, VI, and VII.

On October 12, 1976, a final order was issued as a result of a consent agreement between SCI and the Commission, to resolve allegations that SCI violated Section 5 of the FTC Act in connection with the marketing of funeral services and merchandise. Part I of the order prohibits certain misrepresentations and practices in connection with the marketing of funeral services and merchandise. Part II provided for consumer redress. Part III requires SCI to transmit copies of the order to all of its funeral homes and to notify all affected employees of the order's requirements. Part IV required SCI to file a compliance report. Part V required SCI to maintain records adequate to disclose its compliance with the order and to furnish such records to the Commission upon request after reasonable notice. The record retention requirements in Part V lasted three years. Part VI