

IN THE MATTER OF

NOTATIONS, INC., ET AL.

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-3551. Complaint, Jan. 18, 1995--Decision, Jan. 18, 1995

This consent order prohibits, among other things, a Pennsylvania company and its president from misbranding any textile product by mentioning or implying that the product contains a fiber without using the generic fiber name required by the Textile Fiber Products Identification Act and the Federal Trade Commission rules, or by mentioning or implying that it contains a fiber when it, in fact, does not. The respondents also are required to file with the Commission a continuing guaranty applicable to all textile products they handle in the future.

Appearances

For the Commission: *Katharine B. Alphin.*

For the respondents: *Debra Klebanoff, Wolf, Block, Schorr & Solis-Cohen, Philadelphia, PA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Textile Fiber Products Identification Act, 15 U.S.C. 70, hereinafter "Textile Fiber Act," and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Notations, Inc., a corporation, and Kurt Erman, 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 Notations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and

principal place of business located at 109 Pike Circle, Huntingdon Valley, Pennsylvania.

PAR. 2. Respondent Kurt Erman is sole shareholder and president of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His office and principal place of business are the same as that of respondent Notations, Inc.

PAR. 3. Respondent Notations, Inc., is engaged in the manufacture, importation and sale of women's blouses.

PAR. 4. Respondents have in the past and presently continue to import, sell and introduce into commerce textile fiber products and otherwise have been engaged in commerce with textile fiber products as "commerce" and "textile fiber products" are defined in the Textile Fiber Act and the Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR 303, hereinafter "Rule(s)," as promulgated by the Federal Trade Commission.

PAR. 5. Certain of said textile products were misbranded by the respondents within the intent and meaning of Sections 3(a), 3(b), 3(c) and 4(a), 15 U.S.C. 70a(a), 70a(b), 70a(c), and 70b(a), of the Textile Fiber Act and Rules 16(c), 17 and 18, 16 CFR 303.16(c), 303.17 and 303.18, thereunder, in that on a hangtag attached to blouses made of 100% polyester, respondents used a trade name, "Micro Silk," thereby supplying non-required information that conflicted with the required disclosure of fiber content. The use of this trade name was false and deceptive, and stated or implied the blouses contained a fiber not present therein. Respondents have, therefore, violated Section 3 of the Textile Fiber Act, 15 U.S.C. 70a, and Rule 2, 16 CFR 303.2. The sections of the Textile Fiber Act and Rules referred to in this paragraph five and paragraph six hereafter are attached hereto as Appendix A and incorporated herein as if fully set forth verbatim.

PAR. 6. The acts and practices of respondents as set forth in paragraph five were, and are, in violation of the Textile Fiber Act and the Rules promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), as amended.

PAR. 7. 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 importation, manufacture and sale of merchandise of the same general kind and nature as merchandise sold by respondents.

PAR. 8. 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, are continuing and will continue in the absence of the relief herein requested.

APPENDIX A

TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

Misbranding and False Advertising Declared Unlawful 15 U.S.C. 70a.

(a) 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 which is misbranded or falsely or deceptively advertised within the meaning of sections 70 to 70k of this title or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) 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, and which is misbranded or falsely or deceptively advertised, within the meaning of sections 70 to 70k of this title or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(c) 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, which is misbranded or falsely or deceptively advertised, within the meaning of sections 70 to 70k of this title or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

* * *

Complaint

119 F.T.C.

Misbranding and False Advertising of Textile Fiber Products
15 U.S.C. 70b.

(a) Except as otherwise provided in sections 70 to 70k of this title, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

RULES AND REGULATIONS UNDER
THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT
16 CFR 303

Rule 2 - General requirements.
[16 CFR 303.2]

(a) Each textile fiber product, except those exempted or excluded under section 12 of the Act, shall be labeled or invoiced in conformity with the requirements of the Act and regulations.

(b) Any advertising of textile fiber products subject to the Act shall be in conformity with the requirements of the Act and regulations.

(c) The requirements of the Act and regulations shall not be applicable to products required to be labeled under the Wool Products Labeling Act of 1939 (Pub. L. 76-850, 15 U.S.C. 68, 54 Stat. 1128).

(d) Any person marketing or handling textile fiber products who shall cause or direct a processor or finisher to label, invoice, or otherwise identify any textile fiber product with required information shall be responsible under the Act and regulations for any failure of compliance with the Act and regulations by reason of any statement or omission in such label, invoice, or other means of identification utilized in accordance with his direction: Provided, That nothing herein shall relieve the processor or finisher of any duty or liability to which he may be subject under the Act and regulations.

Rule 16 - Arrangement and disclosure of information on labels.
[16 CFR 303.16(c)]

(c) Subject to the provisions of Section 303.17 of this part, if non-required information or representations are placed on the label or elsewhere on the product, such non-required information or representation shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information, nor shall such non-required information in any way be false or deceptive as to fiber content.

Rule 17 - Use of fiber trademarks and generic names on labels.
[16 CFR 303.17]

(a) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(b) Where a generic name or a fiber trademark is used on any label, whether required or non-required, a full and complete fiber content disclosure shall be made in accordance with the Act and regulations the first time the generic name or fiber trademark appears on the label.

(c) If a fiber trademark is not used in the required information, but is used elsewhere on the label as non-required information, the generic name of the fiber shall accompany the fiber trademark in legible and conspicuous type or lettering the first time the trademark is used.

(d) No fiber trademark or generic name shall be used in non-required information on a label in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate directly or indirectly that a textile fiber product is composed wholly or in part of a particular fiber, when such is not the case.

Rule 18 - Terms implying fibers not present.
[16 CFR 303.18, as amended, effective October 25, 1965.]

Words, coined words, symbols or depictions, (a) which constitute or imply the name or designation of a fiber which is not present in the product, (b) which are phonetically similar to the name or designation of such a fiber, or (c) which are only a slight variation of spelling from the name or designation of such a fiber shall not be used in such a manner as to represent or imply that such fiber is present in the product.

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 Textile Fiber Products Identification Act, 15 U.S.C. 70, hereinafter "Textile Fiber Act," and of the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR 303, hereinafter "Rule(s)," and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; and

The respondents, their attorneys, 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 the complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 rules, 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 Notations, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 109 Pike Circle, Huntingdon Valley, Pennsylvania.

2. Respondent Kurt Erman is the sole shareholder and president of Notations, Inc. He formulates, directs and controls the policies, acts and practices of said corporation, and his office and principal place of business are the same as Notations, Inc.

3. 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 Notations, Inc., a corporation, its successors and assigns, and its officers, and Kurt Erman, 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, 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, as "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, 15 U.S.C. 70, hereinafter "Textile Fiber Act," and the Rules and Regulations under the Textile Fiber Products Identification Act, 16 U.S.C. 303, hereinafter "Rule(s)," do forthwith cease and desist from misbranding or falsely or deceptively advertising any such product by:

A. Mentioning or implying fiber content without using the generic fiber names in a manner consistent with the Textile Fiber Act and the Rules thereunder; and

B. Mentioning or implying fiber content for a fiber that is not present in such textile fiber product.

II.

It is further ordered, That respondents shall forthwith file with the Commission a continuing guaranty applicable to all textile products handled by respondents, in the form prescribed by Rule 38, 16 CFR 303.38.

III.

It is further ordered, That respondent Notations, Inc., shall:

A. For a period of five (5) years after the service of this order, keep copies of each stamp, tag, label or other form of identification that shows information required by the Textile Fiber Act as well as such records as will show the textile fiber products in which each stamp, tag, label or other form of identification was affixed for each product it introduces, manufactures for introduction, sells, advertises, offers for sale or imports; and

B. For a period of five (5) years after the service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying, the documents in paragraph

III.A. above and such other documents and materials as shall demonstrate full compliance with this order.

IV.

It is further ordered, That respondent Notations, Inc., shall within thirty (30) days after the date of service of this order, provide a copy of this order to each of its current directors and officers, and to each employee, agent and representative having managerial, purchasing, importing, sales, advertising, or policy responsibility with respect to the subject matter of this order.

V.

It is further ordered, That respondent, Notations Inc., shall, in writing, notify the Federal Trade 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 that may affect compliance obligations arising out of the order.

VI.

It is further ordered, That, for a period of five (5) years from the date of service of this order, respondent Kurt Erman shall, in writing, notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with a new business or employment, each such notice to 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.

VII.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this order, submit a verified 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

NEW ENGLAND JUVENILE RETAILERS ASSOCIATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3552. Complaint, Jan. 18, 1995--Decision, Jan. 18, 1995

This consent order prohibits, among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent order also requires the dissolution of the association within sixty days and requires the association to send a letter, acknowledging the consent order with the Commission and outlining its terms, to the manufacturers it allegedly threatened to boycott.

Appearances

For the Commission: *Phoebe D. Morse, Gary S. Cooper and Mary Lou Steptoe.*

For the respondents: *Arthur Goldberg, Nathanson & Goldberg, Boston, MA. and Robert Colby, Alexandria, VA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named above have violated the provisions of Section 5 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, hereby issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New England Juvenile Retailers Association ("NEJRA") is an unincorporated association of retailers of juvenile products doing business in New England, with an office