

IN THE MATTER OF
R.J. REYNOLDS TOBACCO COMPANY

Docket 9285. Interlocutory Order, May 26, 1999

ORDER WITH RESPECT TO PROTECTIVE ORDER

On March 29, 1999, the R.J. Reynolds Tobacco Company ("Reynolds") filed a motion requesting that the Commission either clarify or modify the Protective Order Governing Confidential Material (dated July 18, 1997), which was entered in Docket No. 9285. Reynolds filed the motion in an effort to establish a right to retain confidential materials it obtained in discovery from Dr. John Pierce ("Pierce") and from the Robert Wood Johnson Foundation ("Foundation"), and to retain work product created by Reynolds' experts incorporating information contained in those materials. Pierce and the Foundation opposed the motion and asked that the Commission impose sanctions against Reynolds.

For the reasons set forth below, we deny Reynolds' request and order that it comply in full with Paragraph 14 of the Protective Order within 15 days of the issuance of this Order.¹ We also deny the Pierce and Foundation requests for sanctions.

I. BACKGROUND

On May 28, 1997, the Commission voted to issue an administrative complaint alleging that Reynolds' Joe Camel advertising campaign violated Section 5 of the FTC Act, 15 U.S.C. 45. During the discovery phase of the administrative proceeding, complaint counsel and counsel for Reynolds jointly moved that the administrative law judge enter a Protective Order Governing Confidential Material ("Protective Order"). The purpose of this order was to control the use and disposition of confidential materials submitted during the course of the proceeding. The Protective Order defined "confidential material" to include, *inter alia*, "documents

¹ Reynolds directed its motion to Administrative Law Judge ("ALJ") James P. Timony, who presided over the adjudicative proceeding in Docket No. 9285. However, because that proceeding has been concluded, *see infra*, the Commission resolves this motion. *See, e.g., General Motors Corp.*, 103 FTC 105 (1984).

provided in compliance with informal discovery or discovery requests pursuant to the Commission's Rules of Practice that are designated [by either party or the submitter] 'confidential material' * * *." Protective Order at ¶ 1.

The Protective Order restricted the disclosure of confidential material to eight categories of individuals, including complaint counsel, Reynolds' counsel, and experts retained by either party to assist at, or in preparing for, trial. Protective Order at ¶ 10. Paragraph 11 further restricted disclosure by stating that confidential material could be disclosed to individuals listed in Paragraph 10 "only for the purposes of the preparation, hearing, and any appeal of this proceeding and any subsequent administrative proceeding and for no other purpose whatsoever." Paragraph 11 also provided that before any expert could receive confidential material, the expert would have to sign the Agreement to Maintain Confidentiality ("Paragraph 11 Agreement") that was attached to the Protective Order. Signers of the Paragraph 11 Agreement pledged not to disclose confidential material to anyone not entitled to receive it, and "that upon the termination of my participation in this proceeding I will promptly return all copies of documents, or portions thereof, containing confidential material, and all notes, memoranda, or other papers containing confidential material, to complaint counsel or respondent's counsel."

Paragraph 14 of the Protective Order specifically governs the ultimate disposition of confidential materials received by any counsel, or expert, for Reynolds. It states that:

[When any such person] ceases to participate in this proceeding, all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information, *shall be returned by such person to counsel for respondent, who in turn shall, at the conclusion of this proceeding, (a) return all original confidential material in his or her possession, custody, or control, to the submitter; and (b) destroy all remaining non-original confidential material.* (emphasis added)

On May 5, 1998, during the course of administrative discovery, Reynolds served Pierce with a subpoena seeking materials related to his article entitled "Tobacco Industry Promotion of Cigarettes and Adolescent Smoking." The article appeared in the February 1998 issue of the Journal of the American Medical Association and reported the results of a study conducted by *Pierce et al.* On July 1, 1998, Pierce complied with the subpoena. Included among the

responsive material were unpublished background data from Pierce's study, which Pierce designated as confidential.

Pierce's study was funded by the Robert Wood Johnson Foundation, and on May 8, 1998, Reynolds served the Foundation with a subpoena seeking all documents in its possession regarding the study. On May 21, 1998, the Foundation complied with the subpoena. Among the documents submitted by the Foundation were 20 pages of peer review materials. Although Reynolds was obligated under Paragraph 5 of the Protective Order to provide the Foundation a copy of the Protective Order, it failed to do so. As a result, counsel for the Foundation did not learn of the Protective Order until November 1998, and at that time, it designated the peer review materials as confidential.

Trial against Reynolds began on November 9, 1998. However, on November 23, 1998, before the trial concluded, Reynolds (and other cigarette manufacturers) entered into an agreement with the attorneys general of 46 states and five other jurisdictions. Pursuant to this settlement, Reynolds agreed, *inter alia*, to cease using all cartoon characters (including Joe Camel) in advertising, and to help fund a public education campaign designed to discourage underage usage of tobacco. The following day, complaint counsel filed a motion to dismiss the Commission's administrative litigation on the grounds that the relief it was seeking had been achieved as a result of the multi-state settlement. Reynolds agreed that the case should be dismissed but urged that it be dismissed with prejudice.

The ALJ thereafter certified complaint counsel's motion to dismiss to the Commission, and on January 26, 1999, the Commission granted the motion ("Dismissal Order"). In the Dismissal Order, we concluded that the public interest warranted dismissal of the complaint because the multi-state settlement achieved the most important elements of the relief that the Commission sought. However, we denied Reynolds' request that the dismissal be with prejudice, noting that we have "consistently refrained from dismissing a complaint with prejudice absent a substantive ruling. Without such a ruling by the ALJ or the Commission, it is not appropriate to foreclose the possibility of further litigation where unanticipated problems might develop with one or more of the relevant remedies." Dismissal Order at 4.

In addition to complaint counsel's motion to dismiss, the Commission had before it Reynolds' request that certain materials

received from Pierce and the Foundation be placed on the public record, and the Foundation's request that the materials it had submitted be accorded in camera treatment. We denied both motions and noted that Paragraph 11 of the Protective Order "prohibits respondent from disclosing the documents outside of this litigation and Paragraph 14 requires respondent to return the documents upon dismissal of the proceeding." Dismissal Order at 6.

On January 27, 1999, counsel for both Pierce and the Foundation sent letters to Reynolds' counsel requesting that, pursuant to the terms of the Protective Order and the Dismissal Order, Reynolds return all original confidential materials to the submitters and retrieve and destroy all copies, notes, memoranda or other papers containing confidential material. On March 5, 1999, Reynolds separately responded to Pierce and the Foundation with identically worded letters. Reynolds stated that it did not believe it was yet required by the Protective Order to retrieve, destroy and return confidential materials. Reynolds further stated that it:

may seek review of the Commission's action in this litigation and may retain the materials pending the review period. Additionally, the Commission's order leaves open the possibility of a subsequent administrative proceeding.

On March 29, 1999, Reynolds filed a Motion for Clarification or Modification of the Protective Order ("Reynolds' Motion"), seeking a right under the Protective Order to retain confidential material subpoenaed from Pierce and the Foundation. This motion is before the Commission now. The motion argues that Reynolds is entitled to retain the material for two reasons. First, Reynolds contends that the Protective Order permits it to retain materials until the expiration of the review period for the proceeding, Reynolds' Motion at 17-20, and argues that this period is six years – the time within which it could challenge the dismissal pursuant to Section 2401 of the Administrative Procedure Act, 28 U.S.C. 2401. Accordingly, Reynolds argues that it should not be required to return any materials at least until January 2005.

Reynolds' second argument is based on Paragraph 11 of the Protective Order. Reynolds' Motion at 20-21, which states that confidential materials may be disclosed to the eight categories of individuals listed in Paragraph 10 *"for the purposes of the preparation, hearing, and any appeal of this proceeding and any subsequent administrative proceeding * * *."* Reynolds claims that,

because it is entitled to disclose the materials to counsel and experts for the purpose of defending itself in "any subsequent administrative proceeding," and because the Commission dismissed the complaint without prejudice, it should not be required to return documents "until there no longer exists the threat of a 'subsequent administrative proceeding' concerning the issues litigated this past November." Reynolds does not indicate when it believes such a threat would no longer exist. These arguments, according to Reynolds, are also supported by notions of equity, fairness, and due process. Finally, Reynolds requests that "[i]f it is deemed necessary," the Protective Order be modified consistent with its arguments. Reynolds' Motion at 21-24.

Both Pierce and the Foundation filed oppositions to Reynolds' motion. Pierce claims that he disclosed confidential material relying on the Protective Order, that the Protective Order clearly requires Reynolds to return confidential materials immediately, and that no modification of its provisions is appropriate. He also asks that the Commission sanction Reynolds and its counsel for their failure to comply with the Protective Order. The Foundation argues that the Protective Order requires the immediate return of the confidential material, that no order modification is appropriate, and that Reynolds and its counsel should be sanctioned.

II. DISCUSSION

After reviewing the submissions of Reynolds, Pierce, and the Foundation, we find that the Protective Order needs no clarification, nor should it be modified. Accordingly, we order that Reynolds and its counsel comply in full with Paragraph 14 of the Protective Order within 15 days of the issuance of this Order. We also reject the requests made by both Pierce and the Foundation that Reynolds and its counsel be sanctioned.

A. Reynolds' Motion for Clarification of Protective Order

The confidentiality obligations of the parties are clearly set forth in Paragraph 14 of the Protective Order which not only governs confidential information from the parties, but also their counsel,

experts, and others retained to assist in the litigation.² As previously noted, Paragraph 14 requires that when any such person "ceases to participate in this proceeding," that person shall return all confidential documents (or portions thereof) and "all notes, memoranda or other papers containing confidential information" to Reynolds' counsel. The paragraph further requires that "at the conclusion of this proceeding," Reynolds' counsel shall return all original confidential materials to the submitter, and shall destroy all other documents containing confidential material. The relevant issue here is whether "this proceeding" has been "concluded."

This proceeding commenced on May 28, 1997, when the Commission issued its complaint challenging Reynolds' Joe Camel advertising campaign,³ and continued until January 26, 1999, when the Commission dismissed its complaint against Reynolds. Just as issuance of the complaint marked the commencement of the "proceeding," dismissal of that complaint marked its conclusion. After dismissal, Reynolds had only one avenue for extending the proceeding -- a petition for reconsideration filed within 14 days pursuant to Commission Rule 3.55, 16 CFR 3.55. Reynolds filed no such petition. Therefore, "this proceeding" concluded on January 26, 1999 and Reynolds is required to return original confidential material to submitters and to destroy all copies.

Reynolds claims that the Protective Order entitles it to retain confidential material at least until the expiration of its right to seek judicial review of the Dismissal Order. It further contends that it has six years within which to seek review -- the time within which it claims it could challenge the Dismissal Order under the Administrative Procedure Act ("APA"). Reynolds' Motion at 19-20. But, the Protective Order creates no such entitlement. The relevant obligations of Paragraph 14 are triggered when the "proceeding" concludes, and, as explained, this proceeding concluded when the complaint was dismissed. While it is possible to argue that *if* the complaint had not been dismissed *and if* the Commission had issued

² Reynolds does not dispute that the documents requested by Pierce and the Foundation are "confidential material," as defined in Paragraph 1 of the Protective Order. Nor does Reynolds dispute that its obligations regarding those documents are governed by the Protective Order.

³ See Commission Rule 3.11(a), 16 CFR 3.11(a) ("an adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint.").

a final cease and desist order,⁴ and then the "proceeding" would have continued until the expiration of Reynolds' right to petition for review of such an by a court of appeals, as set forth in Section 5(c) of the FTC Act, 15 U.S.C. 45(c), these hypothetical conditions do not exist here. In this case, the possibility of further proceedings pursuant to the May 28, 1997 complaint was extinguished once the complaint was dismissed and Reynolds failed to petition for reconsideration under Rule 3.55.⁵

Moreover, even if, as Reynolds contends, it could still challenge the Commission's decision to dismiss the complaint under the APA, the challenge would become a new action, not a continuation, appeal, or recommencement, of this proceeding, since Reynolds would have to argue that the Commission's order of dismissal constituted final action, not otherwise directly reviewable. See 5 U.S.C. 704. In doing so, Reynolds would be conceding that the action before the Commission had concluded, thereby compelling it to comply with Paragraph 14 of the Protective Order.⁶

The second argument advanced by Reynolds in support of its "right" to retain confidential material is that Reynolds could be subject to some future hypothetical legal action because the complaint was dismissed without prejudice.⁷ Reynolds' Motion at 21-24. Although the Commission could, at least theoretically, bring such an

⁴ In that situation, the complaint would retain its vitality throughout the review period, and the matter could be remanded to the Commission for further administrative litigation pursuant to the complaint.

⁵ Although Reynolds contends that Pierce and the Foundation have conceded that it could have extended the proceeding by filing a petition for review within 60 days pursuant to Section 5(c) of the FTC Act, this is incorrect. Section 5(c) provides for petitions for review only when the Commission issues a cease and desist order. Here, the Commission issued no such order and Section 5(c) does not apply.

⁶ Significantly, Reynolds does not argue that it can seek direct review of the Commission's January 26 order, only that APA review is still available to it. Because such review is not direct review but is dependent upon the conclusion of the proceeding before the Commission, Reynolds' right to seek APA review does not affect its obligation under Paragraph 14.

⁷ Reynolds claims that *Richards v. Firestone Tire & Rubber Co.*, 928 F.2d 241 (7th Cir. 1991) holds that a case dismissed without prejudice is not concluded on the merits. Reynolds' Opposition to John Pierce's and the Robert Wood Johnson Foundation's Cross-Motions for Enforcement of the Protective Order ("Reynolds' Opposition") at 4. However, the court in *Richards* reached no such sweeping conclusion. The court held instead that *Richards'* case against Firestone had not concluded because the plaintiff had sought dismissal without prejudice merely as a ruse to avoid an unfavorable discovery order from the trial court. It was clear that the plaintiff intended to refile the case once it was dismissed. By contrast, in this case, complaint counsel sought dismissal because it believed that the relief it was seeking was already achieved in another forum.

action, the Protective Order does not permit Reynolds to retain confidential material pending such a possibility.⁸

Reynolds further claims that it may retain the materials at issue because Paragraph 11 of the Protective Order provides that confidential materials may be given to certain individuals specified in Paragraph 10 "for the purposes of the preparation, hearing, and any appeal of this proceeding and any subsequent administrative proceeding ..." and that the possibility of a "subsequent administrative proceeding" has not dissipated. Reynolds' Motion at 21.

We reject this interpretation of the Protective Order because, in our view, it would make the Order internally inconsistent; more specifically, the plain wording of Paragraph 14 would clash with that of Paragraph 11. It is well established that courts should interpret the provisions of an order consistently, giving full application to each provision as written, *See United States v. ITT Continental Baking Co.*, 420 U.S. 223, 233-241 (1975). We reject an interpretation that creates an inconsistency and interprets one provision at the expense of another.

Instead, we believe that the terms of Paragraph 11 must be read as a logical progression. "Any subsequent administrative proceeding" immediately follows "any appeal of this proceeding." That is, Reynolds may retain and disclose confidential materials not just in preparation for the administrative trial, but also in preparation for a petition for review of the trial *and for any subsequent administrative proceeding that might result from appellate disposition of such a petition*. Thus, the "subsequent administrative proceeding" referred to in Paragraph 11 allows for the possibility of an administrative proceeding that stems from a remand after appeal, a situation that has not occurred here. Paragraph 11 was not intended to provide an open-ended grant of authority for Reynolds to retain confidential material from this proceeding for later use in some entirely separate, subsequent administrative proceeding.

In sum, Paragraph 11 of the Protective Order assures Reynolds that it may retain and disclose confidential material to its experts during all phases of the proceeding, including any possible

⁸ Reynolds also claims that if the Commission, in the future, again challenges its Joe Camel campaign, it needs the confidential material not only to defend itself but also to challenge the Commission's issuance of a complaint. Reynolds' Opposition at 5. However, as Reynolds learned in challenging the Commission's 1997 complaint, there is no subject matter jurisdiction for such an action. *R.J. Reynolds Tobacco Co. v. FTC*, 14 F. Supp. 2d 757 (M.D.N.C. 1998).

subsequent administrative proceeding that may result from a remand on appeal of a Commission order to cease and desist (if there were such an order). However, nothing in Paragraph 11 describes Reynolds' obligation to return confidential material. That obligation is set forth exclusively in Paragraph 14 of the Protective Order which makes clear that Reynolds' possession of the confidential material must end when the proceeding ends. Based on the plain reading of Paragraph 14, and as described in our Dismissal Order, we reject Reynolds' contention that the Protective Order permits it to retain confidential material.

B. Reynolds' Motion for Modification of Protective Order

As an alternative means of retaining confidential discovery materials, Reynolds seeks modification of the Protective Order. But, like Reynolds' request for clarification, its alternative request is also deficient. Hence, we conclude that there is insufficient basis for modifying the Order.

Reynolds asks the Commission to exercise its discretion to modify the Protective Order to permit it to retain confidential material "in order to defend itself against the plaintiff (the Commission) in a future action, an action clearly contemplated by the Commission when it dismissed the Joe Camel complaint without prejudice." Reynolds' Motion at 23. Reynolds contends that it "should not be required to fight the same costly discovery battles again, and incur the same significant costs in retaining experts to duplicate work that has already been accomplished. Requiring Reynolds to return these materials and destroy the fruits of its experts' labor at this juncture would be highly prejudicial." Reynolds' Motion at 22. Accordingly, Reynolds' request raises the question of whether the circumstances presented here form an appropriate basis for the exercise of Commission discretion.

A protective order may be modified only where the party seeking modification shows good cause for the modification. *See Lee Shuknecht & Sons, Inc. v. P. Vigneri & Sons, Inc.*, 927 F. Supp. 610, 614-16 (W.D.N.Y. 1996). To determine whether good cause has been shown, courts consider such factors as the nature of the protective order and the modification that is sought, the foreseeability at the time the order was entered of the modification that is now requested, and

the extent to which a party or a third party will be prejudiced by the modification or by the retention of the *status quo*. *Id.*

Here, the Protective Order was not imposed on the parties, it was instead sought jointly by complaint counsel and by counsel for Reynolds.⁹ Moreover, the modification sought by Reynolds, the authority to retain confidential material beyond the conclusion of the proceeding, goes to the heart of the scheme contemplated by the Protective Order. Because Reynolds sought issuance of the Protective Order, and because the provision Reynolds seeks to modify is a central one, Reynolds bears a heavy burden in seeking this modification.

First, Reynolds has not made a sufficient showing that its present situation was not foreseeable at the time it agreed to entry of the Protective Order. It was foreseeable that, at the conclusion of the Commission's proceeding, Reynolds would be in possession of confidential material that it might want to retain.

Nor has Reynolds made the sort of showing of prejudice that justifies the modification it seeks. Reynolds claims that if the Commission initiates another case against its Joe Camel advertising campaign, it will be required "to fight the same costly discovery battles again, and incur the same significant costs in retaining experts to duplicate work that has already been accomplished." Motion at 22. Although Reynolds claims that "the Commission contemplates a proceeding covering the same issues litigated this past November," Motion at 20, this is pure speculation on Reynolds' part. When the Commission dismissed the complaint without prejudice, it did so because it did not resolve the merits of the matter, not because it contemplated any further proceeding against Reynolds' Joe Camel campaign. Indeed, the multi-state settlement provides adequate relief regarding the campaign, and the Commission has no reason to believe that Reynolds will fail to comply with that settlement. Since Reynolds' claim of prejudice is based solely upon a hypothetical future Commission action, Reynolds has failed to make a sufficient showing that it will be prejudiced by the absence of the modification it seeks.

⁹ "Where a protective order is agreed to by the parties before its presentation to the court, there is a higher burden on the movant to justify the modification of the order." *AT&T v. Grady*, 594 F.2d 597 (7th Cir. 1978), *cert. denied*, 440 U.S. 971 (1979). See also *Omega Homes, Inc. v. Citicorp Acceptance Co.*, 656 F. Supp. 393 (W.D. Va. 1987).

Moreover, Pierce and the Foundation credibly claim that they will be prejudiced if the Protective Order is modified. They assert that if Reynolds retains the confidential material, the material may be improperly disclosed to unauthorized persons and that Reynolds may seek to use the material to discredit Pierce's study. They further argue that, given the length of time Reynolds seeks to retain the material, they will be unable to monitor or restrict further dissemination of the material. The Foundation argues that additional disclosure of the peer review material it has provided may damage the Foundation's peer review process. As explained in the Agreement to Maintain Confidentiality (which is attached to the Protective Order), Pierce and the Foundation are intended beneficiaries of the Protective Order. We agree that if Reynolds is permitted to retain the confidential material for at least six years beyond the conclusion of the Commission's proceeding, there is an increased risk that the material will be disclosed to others not originally contemplated by the Protective Order. This may result from inadvertent disclosure, or as the result of compulsory process issued to Reynolds. Given the nature of the material, we believe that both Pierce and the Foundation are more likely to be prejudiced by the modification than Reynolds is prejudiced by the *status quo*.

For these reasons, we do not find good cause for the modification Reynolds seeks and we decline to exercise our discretion to grant its motion.¹⁰

C. Pierce and Foundation Requests for Sanctions Against Reynolds

As previously discussed, both Pierce and the Foundation opposed Reynolds' motion and requested sanctions against Reynolds and its

¹⁰ Reynolds' position is not similar to that of the third party seeking modification of the protective order in *Wilk v. American Medical Ass'n*, 635 F.2d 1295 (7th Cir. 1980); see Reynolds' Motion at 23. In that case, a third party (the State of New York) sought modification of a protective order so that it could discover AMA documents that were in Wilk's possession. New York was already engaged in litigation with the AMA and the court concluded that it would be wasteful to force New York to duplicate discovery already made during the AMA's litigation with Wilk. 635 F.2d at 1299. Although Reynolds believes that the Commission "clearly contemplate[s]" another challenge to the Joe Camel campaign, see Reynolds' Motion at 23, there is no basis for this belief and no reasonable likelihood that Reynolds will have to engage in any duplication of discovery.

Nor does Reynolds have any right to retain confidential material. *Kern v. TXO Production Corp.*, 738 F.2d 968 (8th Cir. 1984), and the other cases cited by Reynolds in its Opposition at 8, merely state that a defendant may use material discovered from the plaintiff in subsequent litigation brought by the same plaintiff. Those cases are all irrelevant to Reynolds' motion because in none of those cases was there either a protective order or any agreement by the parties to return or destroy confidential material at the conclusion of litigation.

counsel for failing to comply with Paragraph 14 of the Protective Order. Although we are sympathetic to the arguments advanced by Pierce and the Foundation, we decline at this time to impose any sanctions. However, we note with serious concern that Reynolds and its counsel have thus far failed to comply with their obligations regarding confidential materials -- obligations that were clearly set forth in the Protective Order and repeated in our Dismissal Order ("Paragraph 14 requires Respondent to return the documents upon dismissal of the proceeding.").

We do not support Reynolds' resort to self-help in order to implement a two month delay in complying with the Protective Order. Any objection that Reynolds had to the terms of the Protective Order or the Dismissal Order could and should have been raised during the period for reconsideration of the Dismissal Order. *See* Commission Rule 3.55, 16 CFR 3.55. Instead, Reynolds failed to raise any issue until March 29, 1999, more than two months following the issuance of the Dismissal Order. Furthermore, for the reasons discussed above, we find no merit whatsoever to the arguments Reynolds has advanced to excuse or delay its counsel's compliance.¹¹

Notwithstanding these concerns, we seek to give Reynolds one final opportunity to comply with its Order obligations,¹² and fully expect Reynolds' counsel to meet their present obligation under this and prior orders regarding the confidential materials at issue.

Accordingly, *It is ordered*, That Reynolds' Motion for Clarification or Modification of the Protective Order is denied. *It is further ordered*, That within 15 days of the date this Order is issued, Reynolds' counsel of record in Docket No. 9285 shall comply in full with the Provisions of Paragraph 14 of the July 18, 1997, Protective Order entered in Docket No. 9285. Upon completion of that compliance, Reynolds' counsel of record shall file with the Secretary of the Commission a Certification detailing that compliance.

¹¹ We believe it is also appropriate to note that Reynolds' failure to return or destroy confidential discovery material may not be the only case where it violated the Protective Order.

¹² We also note that counsel appearing before the Commission have a solemn duty to comport themselves in accordance with professional standards, and to comply with orders of the Commission. *See generally* 16 CFR 4.1(e).

IN THE MATTER OF
WAL-MART STORES, INC.

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

Docket C-3870. Complaint, June 2, 1999--Decision, June 2, 1999

This consent order, among other things, prohibits Wal-Mart Stores, Inc., an Arkansas-based retailer, from advertising any textile fiber product or any wool product in any mail order catalog or mail order promotional material without disclosing clearly and conspicuously that the product was either made in the U.S.A., imported, or both.

Participants

For the Commission: *Carol Jennings and Elaine Kolish.*

For the respondent: *Irving Scher, Weil, Gotschal & Manges*, New York, N.Y.

COMPLAINT

The Federal Trade Commission, having reason to believe that Wal-Mart Stores, Inc. ("respondent") has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* (FTC Act), the Textile Fiber Products Identification Act, 15 U.S.C. 70 (Textile Act), and the Wool Products Labeling Act, 15 U.S.C. 68 (Wool Act), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 702 S.W. 8th Street, Bentonville, Arkansas.

2. Respondent is a retail seller that has advertised, offered for sale, sold, and distributed to the public various products, including textile products subject to the requirements of the Textile Act and wool products subject to the requirements of the Wool Act.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has offered for sale and sold, by means of an online shopping service or catalog on the Internet, various products, including products subject to the requirements of the Textile Act and the Wool Act.