

IN THE MATTER OF
GOTTSCHALKS, 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-3878. Complaint, June 3, 1999--Decision, June 3, 1999

This consent order, among other things, prohibits Gottschalks, Inc., a California-based retailer, from advertising any textile fiber product or 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: *Eleanor Durham, Charles Harwood, Carol Jennings, and Elaine Kolish.*

For the respondent: *Warren Williams*, in-house counsel, Fresno, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gottschalks, 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 California corporation with its principal office or place of business at 7 River Park Place E., Fresno, California.
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.

5. Since October 1, 1998, respondent has offered for sale and sold, by means of an online shopping service or catalog on the Internet, textile products subject to the requirements of the Textile Act and wool products subject to the requirements of the Wool Act, without disclosing in its product descriptions whether such products were made in the U.S.A., imported, or both, thus violating 15 U.S.C. 70b(i), and implementing regulations in 16 CFR 303.34 (as amended 63 Fed. Reg. 7508, 7518 (Feb. 13, 1998)), and 15 U.S.C. 68b(e), and implementing regulations in 16 CFR 300.25a (as amended 63 Fed. Reg. 7508, 7516, 7517 (Feb. 13, 1998)).

6. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act, the Textile Fiber Products Identification Act, and the Wool Products Labeling Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondent of all the jurisdictional facts set forth in the draft 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, 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 respondent violated the said Acts, and that a 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 Gottschalks, Inc. is a California corporation with its principal office or place of business at 7 River Park Place E., Fresno, CA.

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 Gottschalks, Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall not advertise any textile fiber product or any wool product in any *mail order catalog* or *mail order promotional material*, as those terms are defined in 16 CFR 303.1(u) and 300.1(h), respectively, or as they may hereafter be amended, without disclosing clearly and conspicuously that the product was either made in the U.S.A., imported, or both.

II.

It is further ordered, That respondent Gottschalks, Inc., and its successors and assigns, for five (5) years after the date of issuance of this order, shall maintain, and upon request make available to the Federal Trade Commission, business records demonstrating compliance with the terms and provisions of this order, including but not limited to:

A. Copies of all mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 16 CFR 300.1(h), that offer textile and/or wool products for direct sale to consumers. If such mail order catalogs and mail order promotional materials are disseminated to consumers in electronic form, copies may also be maintained in an electronic format.

B. All complaints and other communications with consumers, or with governmental or consumer protection organizations, that pertain to country of origin disclosures for textile and/or wool products.

III.

It is further ordered, That respondent Gottschalks, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent Gottschalks, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

V.

It is further ordered, That respondent Gottschalks, Inc., and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

This order will terminate on June 3, 2019, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

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IN THE MATTER OF
MEDTRONIC, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3879. Complaint, June 3, 1999--Decision, June 3, 1999

This consent order, among other things, requires Medtronic, Inc., a Minnesota-based corporation engaged in the research, development, manufacture and sale of medical devices, to divest Avecor's non-occlusive arterial pump assets to Baxter Healthcare Corporation or another Commission-approved buyer. The consent order also requires Medtronic to provide substantial assistance to enable the buyer to obtain FDA approval to manufacture and market Avecor pumps and reservoirs to use with the pump.

Participants

For the Commission: *Stephen Riddell, Mark Menna, Paul Frangie, Phillip Broyles, Kenneth Davidson, Roberta Baruch, William Baer, Louis Silvia, Roy Levy, and Christopher Taylor.*

For the respondent: *Philip Larson, Hogan & Hartson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Medtronic, Inc. ("Medtronic"), a corporation, has entered into an agreement and plan of merger with Avecor Cardiovascular, Inc. ("Avecor"), a corporation, whereby Medtronic proposes to acquire all of the outstanding common stock of Avecor, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and that such agreement and plan of merger, if consummated would violate Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows: