

Complaint

IN THE MATTER OF

FANBUZZ, INC.

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

Docket C-4026; File No. 0123151

Complaint, November 19, 2001--Decision, November 19, 2001

This consent order addresses practices used by Respondent FanBuzz, Inc. in connection with the sale of textile products by means of an Internet catalog. The order, among other things, prohibits the respondent from violating the Textile Fiber Products Identification Act, and Commission rules and regulations implementing the requirements of the statute. The order also requires the respondent to distribute copies of the order to certain company officials and employees.

Participants

For the Commission: *Carol Jennings, Elaine D. Kolish, and Keith Anderson.*

For the Respondent: *Martin J. Neville, Neville Peterson, LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that FanBuzz, Inc. (“respondent”), has violated 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 *et seq.* (“Textile Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Minnesota corporation with its principal office or place of business at 10729 Bren Road East, Minnetonka, Minnesota 55343.
2. Respondent is an Internet seller of clothing for men and women. Respondent has advertised, offered for sale, sold, and

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distributed to the public textile products subject to the requirements of the Textile 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 Internet catalog, textile products subject to the requirements of the Textile Act.

5. Respondent has offered for sale and sold, by means of an online shopping service or Internet catalog, textile products subject to the requirements of the Textile 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 C.F.R. § 303.34.

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).

THEREFORE, the Federal Trade Commission this nineteenth day of November, 2001, has issued this complaint against respondent.

By the Commission.

Decision and Order

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 violations of the Federal Trade Commission Act and the Textile Fiber Products Identification 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 thirty (30) 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 FanBuzz, Inc., is a Minnesota corporation with its principal office or place of business at 10729 Bren Road East, Minnetonka, Minnesota 55343.
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.

Decision and Order

ORDER

I.

IT IS ORDERED that respondent FanBuzz, Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, shall not violate any provision of the Textile Fiber Products Identification Act, 15 U.S.C. § 70 *et seq.*, and any of the Rules promulgated pursuant to the Act, 16 C.F.R. Part 303, or as they may hereafter be amended.

II.

IT IS FURTHER ORDERED that respondent FanBuzz, 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 C.F.R. § 303.1(u), that offer textile 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, provided that it is accessible or printable.
- B. All complaints and other communications with consumers, or with governmental or consumer protection organizations, that pertain to country of origin disclosures for textile products.

III.

IT IS FURTHER ORDERED that respondent FanBuzz, Inc., and its successors and assigns, shall deliver a copy of this Order to

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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 FanBuzz, 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. 20580.

V.

IT IS FURTHER ORDERED that respondent FanBuzz, 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.

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VI.

This Order will terminate on November 19, 2021, 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.

By direction of the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent FanBuzz, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile products by means of an Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and the Textile Fiber Products Identification Act, 15 U.S.C. § 70 *et seq.*, by failing to disclose in its Internet catalog whether products offered for sale were made in the United States, imported, or both.

Part I of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act and Commission rules and regulations, found at 16 C.F.R. Part 303, implementing the requirements of the statute.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 C.F.R. § 303.1(u), that offer textile products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile products.

Analysis

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

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IN THE MATTER OF

AIRGAS, INC.

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

Docket C-4029; File No. 0010040

Complaint, December 12, 2001--Decision, December 12, 2001

This consent order addresses the acquisition by Respondent Airgas, Inc., the only North American producer of nitrous oxide – a clear, odorless gas that is mainly used in dental and surgical procedures, as an analgesic or a weak anesthetic – of the Puritan Bennett Medical Gas Business from Mallinckrodt, Inc. The order, among other things, requires the respondent to divest a nitrous oxide business – consisting of two nitrous oxide production plants, customer contracts, and all related assets necessary for distribution and storage – to Air Liquide, a producer of other medical gases such as medical grade oxygen and nitrogen. The order also requires the respondent to supply Air Liquide with a specified amount of bulk liquid nitrous oxide from its Florida nitrous oxide production plant, in order to ensure that Air Liquide has the same volume of nitrous oxide as the respondent did before it acquired Puritan Bennett.

Participants

For the Commission: *Christina R. Perez, James J. Hagarty, Ann Malester, Joseph Eckhaus, Elizabeth A. Piotrowski, Fred C. Martin, and Daniel P. O'Brien.*

For the Respondent: *Stephen Stack, Dechert.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Airgas, Inc. ("Airgas"), a corporation subject to the jurisdiction of the Commission, has acquired 100 percent of the Puritan Bennett Medical Gas Business ("the Acquisition") from Mallinckrodt, Inc. ("Mallinckrodt"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as