

and personnel in such a way as to execute [that] policy efficiently and economically" (*Moog Industries, Inc. v. Federal Trade Commission*, 355 U.S. 411, 413 (1958)), has determined that it would not be in the public interest to proceed further in this matter. The complaint will be dismissed. Continuing surveillance will be maintained, however, of future developments in this industry. Any future acquisitions by respondent will receive careful attention, and the Commission will take such action thereon as may be required in the public interest.

Commissioner MacIntyre did not participate.

#### ORDER DISMISSING COMPLAINT

For the reasons set forth in the accompanying opinion, *It is ordered*, That the complaint herein be, and it hereby is, dismissed.

Commissioner MacIntyre not participating.

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#### IN THE MATTER OF

#### TAYLOR-FRIEDSAM CO., INC., ET AL.

#### ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

*Docket 8658. Complaint, March 8, 1965—Decision, March 28, 1966*

Order requiring a New York City wholesale distributor of domestic and imported ribbons, to cease misbranding any textile fiber ribbon and furnishing false guaranties that such textile fiber products were not misbranded or misrepresented.

#### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Taylor-Friedsam Co., Inc., a corporation, and Dorothy Nitsch, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceed-

## Complaint

69 F.T.C.

ing 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 Taylor-Friedsam Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Dorothy Nitsch is an officer of the corporate respondent. She formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The respondents are engaged in the sale of ribbons to retailers and manufacturers throughout the United States. The respondents have their office and principal place of business at 1400 Broadway, New York, New York.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents have been and are now engaged in the introduction, delivery for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce, textile fiber products either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded within the intent and meaning of Section 4(a) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which:

Set forth the fiber content as 60% nylon and 40% rayon, whereas, in truth and in fact, said product contained a substantially different amount of nylon and rayon.

PAR. 4. Certain of said textile fiber products were further misbranded in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section 4(b) of

the Textile Fiber Products Identification Act, and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded textile fiber products, but not limited thereto, were textile fiber products with labels which failed:

1. To disclose the true generic names of the fibers present; and
2. To disclose the percentage of such fibers.

PAR. 5. Certain of said textile fiber products were misbranded in violation of the Textile Fiber Products Identification Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that samples, swatches, and specimens of textile fiber products subject to the aforesaid Act, which were used to promote or effect sales of such textile fiber products, were not labeled to show their respective fiber content and other information required by Section 4(b) of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, in violation of Rule 21(a) of the aforesaid Rules and Regulations.

PAR. 6. The respondents have furnished false guaranties that their textile fiber products were not misbranded in violation of Section 10 of the Textile Fiber Products Identification Act.

PAR. 7. The acts and practices of the respondents as set forth above were and are in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted and now constitutes unfair methods of competition and unfair and deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

*Mr. Michael P. Hughes* for the Commission.

*Mr. Leon P. Gold*, of *Snea, Gallop, Climenko & Gould*, New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

SEPTEMBER 20, 1965

The complaint in this proceeding charges Taylor-Friedsam Co., Inc., a corporation, and Dorothy Nitsch, individually and as an officer of said corporation, hereinafter called respondents, with misbranding and falsely guaranteeing textile fiber products, in violation of the provisions of the Textile Fiber Products Identification Act, the Federal Trade Commission Act, and the regulations promulgated thereunder.

The complaint alleges, among other things, that respondent

corporation sold ribbon with labels attached thereto stating that the ribbon had a fiber content of 60% nylon and 40% rayon, whereas, the ribbon contained a substantially different amount of nylon and rayon, in violation of Sections 4(a) and (b) of the Textile Fiber Products Identification Act. Corporate respondent was also charged with issuing false guaranties that the ribbon was not misbranded. Each respondent, through counsel, answered the complaint. The corporate respondent admits that the ribbon contained substantially different amounts of nylon and rayon from those stated on the label, but seeks to excuse its acts on the grounds that the labels were placed on the ribbon by the manufacturer before the ribbon was shipped to corporate respondent. Also, corporate respondent says it had no reason to doubt that the ribbon had been correctly labeled by the manufacturer as to fiber content.

The individual respondent, Dorothy Nitsch, says that she was an officer in name only and was merely an employee of the corporate respondent, that her duties did not involve labeling the ribbon for fiber content, and had no knowledge that the ribbon was mislabeled until so informed by an investigator of the Federal Trade Commission. She prays that no order be entered against her.

A hearing was held in New York, New York, at which time oral and documentary evidence was received in support of, and in opposition to, the allegations of the complaint. The evidence offered by respondents related principally to the scope of the order to be entered, if any.

Proposed findings have been filed by counsel for the parties. These have been considered. All proposed findings of fact and conclusions of law not found or concluded herein are denied. Upon the basis of the entire record, the hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

#### FINDINGS OF FACT

1. The respondent, Taylor-Friedsam Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and place of business located at 1400 Broadway, New York, New York. The corporate respondent is a wholesale distributor of ribbon to retailers and manufacturers in various parts of the United States.

2. The individual respondent, Dorothy Nitsch, was an em-

ployee of the corporate respondent for approximately 24 years. From 1953 until she left its employment in February, 1965, Miss Nitsch was vice president, but did not own any stock in corporate respondent. The evidence shows, and it is found, that she was an officer of corporate respondent in name only and did not formulate, direct or control the acts and practices of corporate respondent. She did not label any of the ribbon involved herein. All acts, which Miss Nitsch performed while employed by the corporate respondent, were on behalf of said corporate respondent and as its agent. Since February, 1965, Miss Nitsch has been employed by Marlene Industries Corporation, 1370 Broadway, New York, New York, as a secretary. Her duties with her present employer do not involve the labeling of fiber products.

3. Prior to and subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, the corporate respondent, Taylor-Friedsam Co., Inc., has been, and is now, engaged in the importation into the United States, in the advertising, offering for sale, and sale, in commerce, of textile fiber products as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

4. On or about March 24, 1964, Mr. Charles T. Rose, an investigator for the Federal Trade Commission, called at the office of Taylor-Friedsam Co., Inc., in New York, New York, and examined its records pertaining to the fiber content of Pattern 4520 Nyvel ribbon then being imported, advertised, sold and distributed in the United States by corporate respondent. During this visit, Mr. Rose talked with Miss Dorothy Nitsch, at that time an employee of corporate respondent. Mr. Rose requested, and was granted, permission to take with him, among other things, a swatch card which contained various sample colors of Pattern 4520 Nyvel ribbon. This swatch card bears corporate respondent's name and address and is labeled "60% Nylon-40% Rayon" as to fiber content. Identical swatch cards were mailed by corporate respondent to its customers and carried by its salesmen for advertising and promotional purposes (Tr. 59-60; 181, 186). This swatch card was received in evidence at the hearing as CX 4.

5. On May 4, 1964, Mr. Rose purchased from R. H. Macy & Co. at one of its stores in New York two separate ribbon holders containing Pattern 4520 Nyvel ribbon (CX 5 and 6). On each holder the ribbon was labeled "60% Nylon-40% Rayon." The label on each holder bears the name of the corporate respondent, Taylor-Friedsam Co., Inc., and said company's RN number 18201. Mr.

Rose obtained a sales receipt (CX 9) from Macy's covering the purchase of these two pieces of ribbon (Tr. 67).

6. Tests were later conducted on the ribbon contained on the swatch card (CX 4) and ribbon holders (CX 5 and 6 which Mr. Rose had purchased from Macy's) by Miss Idelle Shapiro, the Commission's textile technologist. The result of these tests showed the actual fiber content of the ribbon on the swatch card (CX 4) to be 51.4% rayon and 48.6% nylon (CX 8; Tr. 136-37). The result of the tests showed the actual fiber content of the ribbon contained on one of the ribbon holders (CX 5) to be 48.8% nylon and 51.2% rayon in the first test, and 48.6% nylon and 51.4% rayon in the second test. The tests showed the actual fiber content of the ribbon contained on the other ribbon holder (CX 6) to be 52.1% nylon and 47.9% rayon in the first test, and 51.0% nylon and 49.0% rayon in the second test (CX 7; Tr. 135-37).

7. It is thus seen from the result of the tests that the fiber content set forth on the labels (60% Nylon-40% Rayon) is substantially different from the actual fiber content of the ribbon, and beyond the percentage tolerance (3%) permitted by Rule 43 of the Rules and Regulations under the Textile Fiber Products Identification Act. The tests demonstrate that there is less nylon and more rayon in the textile products (ribbons) than is stated on the labels. This substantial difference (approximately 9%) in fiber content constitutes misbranding of the ribbon, a fiber product, in violation of Section 4(a) of the Act, as alleged in the complaint. Likewise, corporate respondent's failure to set forth on the labels the correct percentages of fibers (nylon and rayon) contained in the ribbon also constitutes misbranding a textile fiber product, in violation of Section 4(b) of the Act, as alleged in the complaint. Since the labels on the swatch card (CX 4) did not show the correct fiber content of the ribbon, corporate respondent also violated Rule 21(a) of the Rules and Regulations under the Act. The labels on the ribbon holders (CX 5 and 6) were also deficient in this respect.

8. Corporate respondent has given to its buyers a continuing guaranty applicable to all textile fiber products sold by it, whereby corporate respondent guarantees that no textile fiber product sold to the buyer will be misbranded or falsely advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and the rules and regulations thereunder. As an example, corporate respondent's continuing guaranty is stamped

