

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
950 Pennsylvania Avenue, N.W. )  
Washington, D.C. 20530 )  
  
Plaintiff, )  
  
v. )  
  
LEON MAX, INC., a corporation, also )  
doing business as Max Studio, )  
3100 New York Drive )  
Pasadena, CA 91107 )  
  
Defendant. )

Civil Action No. 1:13-cv-00003

**COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon the notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(B), 13(b), and 16(a) of the Federal Trade Commission Act as amended (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), 53(b), and 56(a), to obtain monetary civil penalties, injunctive, and other relief for Defendant’s violations of the Textile Fiber Products Identification Act (“Textile Act”), 15 U.S.C. § 70 *et seq.*, the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 C.F.R. Part 303 (“Textile Rules”), and injunctive relief for violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331,  
3 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(B), 53(b), and 56(a). This action arises  
4 under 15 U.S.C. § 45(a).

5 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)  
6 and (c) and 1395(a).

7 **DEFENDANT**

8 4. Defendant Leon Max, Inc., also doing business as Max Studio, is a California  
9 corporation with its principal place of business at 3100 New York Drive, Pasadena, California  
10 91107. At all times material to this complaint, Defendant has participated in the acts and  
11 practices described in this complaint. Defendant transacts business in this district, including  
12 through its website, www.maxstudio.com, its Max Studio retail store located at 1242 Wisconsin  
13 Avenue, N.W., Washington, District of Columbia 20007, and other retail stores including,  
14 among others, Macy’s, Bloomingdale’s, Dillards, and Lord & Taylor.

15 **COMMERCE**

16 5. At all times material to this complaint, Defendant has maintained a substantial  
17 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,  
18 15 U.S.C. § 44.

19 **DEFENDANT’S BUSINESS PRACTICES**

20 6. Defendant markets and sells textile fiber products throughout the United States  
21 using its website and its retail stores, as well as through other retail department stores.  
22 Defendant manufactures and sells textile fiber products under its own private label, Max Studio.

23 7. In advertisements for textile fiber products on its website, Defendant makes or has  
24 made various claims concerning the fiber content of those textile fiber products.

25 8. On its www.maxstudio.com website, Defendant has claimed, without  
26 qualification, that the textile fiber in numerous products is “bamboo”:

27 a. For example, in the product description for the “Racer Back Tank,”  
28 Defendant has claimed, “You can still be a green-goddess at the gym when you wear this

1 delicious racer back tank cut from an **eco-wonderful bamboo** and cotton jersey. **Besides**  
2 **its earth-friendly nature, the beauty of bamboo is that it is luxuriously soft, and its**  
3 **absorbent properties are just right** for sweating it out at yoga, Pilates or on the run”  
4 (emphasis added). In the fabric description of the same product, Defendant has stated  
5 that the tank is “50% BAMBOO, 50% COTTON.”

6 b. Similarly, in the product description for the “Silk & Bamboo Broadcloth  
7 Shirred Shell,” Defendant has claimed, “Soft shirring on a delicate and **eco-friendly**  
8 **bamboo** and silk fabric lends this top its ethereal feel,” while the fabric description for  
9 the product has stated that it is “65% BAMBOO, 35% SILK.” (emphasis added).

10 9. In addition, on its www.maxstudio.com website, Defendant has sold textile fiber  
11 products labeled as “bamboo.”

12 10. For example, on March 17, 2010, the Commission purchased a “Football Tee”  
13 and a “Bamboo Seersucker Stripe Scoop Yoke Dress” from the www.maxstudio.com website.  
14 Both items were purchased directly from, and shipped by, Defendant. The label on the plastic  
15 packaging containing the “Football Tee” stated that the fabric composition was “50% Bamboo  
16 50% Cotton.” The fiber content label sewn into the shirt also stated that the fiber content was  
17 “50% Bamboo 50% Cotton.” A hangtag attached to the shirt stated that it was “Bamboo” and  
18 that “Bamboo is a wonderful new fiber that is lustrous, absorbent and also has anti-bacterial  
19 properties.” Similarly, the fiber content label sewn into the “Bamboo Seersucker Stripe Scoop  
20 Yoke Dress” stated that the fiber content of the shell was “99% Bamboo 1% Spandex” and the  
21 lining was “100% Cotton.” The dress also had the same “Bamboo” hangtag as the shirt.

22 11. Textile fiber products marketed and sold by Defendant as bamboo, including  
23 those described in Paragraphs 8 through 10 above, are rayon and not actual bamboo fiber woven  
24 into fabric.

25 12. Rayon is the generic name for a type of regenerated or manufactured fiber made  
26 from cellulose. Rayon is manufactured by taking purified cellulose from a plant source, also  
27 called a cellulose precursor, and converting it into a viscous solution by dissolving it in one or

28 //

1 more chemicals, such as sodium hydroxide. The chemical solution is then forced through  
2 spinnerets and into an acidic bath where it solidifies into fibers.

3 13. Many plant sources may be used as cellulose precursors for rayon fabric,  
4 including cotton linters (short cotton fibers), wood pulp, and bamboo. Regardless of the source  
5 of the cellulose used, the manufacturing process involves the use of hazardous chemicals, and the  
6 resulting fiber is rayon and not cotton, wood, or bamboo fiber. *See* 40 C.F.R. Part 63 (“National  
7 Emissions Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing”).

8 14. “[H]azardous air pollutants (HAP) emitted from cellulose products manufacturing  
9 operations” include carbon disulfide, carbonyl sulfide, ethylene oxide, methanol, methyl  
10 chloride, propylene oxide, and toluene. 40 C.F.R. § 63.5480.

11 15. Pursuant to the Textile Act and Rules, textile products must be labeled and  
12 advertised using the proper generic fiber names recognized or established by the Commission.  
13 Manufactured textile products composed, in whole or in part, of regenerated cellulose fiber must  
14 be labeled and advertised using a generic fiber name such as rayon.

15 **PRIOR COMMISSION PROCEEDINGS CONCERNING**  
16 **TEXTILE FIBER PRODUCT MISREPRESENTATIONS**

17 16. In August 2009, the Commission announced three settlements and one  
18 administrative action against marketers improperly labeling and advertising rayon textile  
19 products as “bamboo.” In addition to publicly announcing these cases, the Commission issued a  
20 Business Alert to remind marketers of the need to label and advertise textile products properly  
21 and to clarify that “bamboo” is not a proper generic fiber name for manufactured rayon textile  
22 fibers. The press release announcing the four cases and the Business Alert were disseminated  
23 widely throughout the marketplace.

24 17. On January 27, 2010, the Commission sent Defendant a letter (“Warning Letter”),  
25 by express mail, informing Defendant that certain acts or practices in connection with the  
26 advertising and labeling of textile fiber products may violate the Textile Act and the Textile  
27 Rules and are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

28 18. Defendant received the Warning Letter on February 2, 2010.

1           19.     Enclosed with the Warning Letter was a synopsis of previous litigated decisions  
2 issued by the Commission, as well as instructions to contact Commission staff or to visit the  
3 Commission’s website at <http://www.ftc.gov/bamboo> to obtain complete copies of the Textile  
4 Act, Textile Rules, and the Commission’s Final Orders and Opinions in the proceedings  
5 described in the synopsis.

6           20.     As detailed in the synopsis enclosed in the Warning Letter, in a series of litigated  
7 decisions, the Commission determined, among other things, that:

8                 a.     both manufacturers and sellers of textile fiber products must comply with  
9 the Textile Act and the Textile Rules, *see H. Myerson Sons, et al.*, 78 F.T.C. 464 (1971);  
10 *Taylor- Friedsam Co., et al.*, 69 F.T.C. 483 (1966); *Transair, Inc., et al.*, 60 F.T.C. 694  
11 (1962); and

12                 b.     it is an unfair or deceptive act or practice to falsely or deceptively stamp,  
13 tag, label, invoice, advertise, or otherwise identify any textile fiber product regarding the  
14 name or amount of constituent fibers contained therein, *see Verrazzano Trading Corp., et*  
15 *al.*, 91 F.T.C. 888 (1978); *H. Myerson Sons, et al.*, 78 F.T.C. 464 (1971); *Taylor-*  
16 *Friedsam Co., et al.*, 69 F.T.C. 483 (1966); *Transair, Inc., et al.*, 60 F.T.C. 694 (1962).

17           21.     The Warning Letter also notified Defendant of its potential liability for civil  
18 penalties under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), for knowingly  
19 engaging in acts or practices determined by the Commission to be unfair or deceptive and  
20 unlawful, as described in Paragraph 20 of this Complaint.

21           22.     Even after receiving the Warning Letter, Defendant continued to market and sell  
22 rayon textile fiber products advertised and labeled as “bamboo.” As a result, on April 13, 2010,  
23 the Commission issued a civil investigative demand (“CID”) to Defendant, seeking documents  
24 and information relating to its advertising, labeling, and sales of such textile products, including  
25 samples of any such products that Defendant contended were composed of actual bamboo fiber  
26 and not of rayon. Defendant produced no such samples and has not otherwise asserted that any  
27 of the textile fiber products it sells are “bamboo.”

28 //

1 23. Despite the Commission’s public announcements and the Warning Letter,  
2 Defendant continued to engage in practices, such as those described in Paragraphs 8 through 10  
3 above.

4 24. The practices described in Paragraphs 8 through 10 above are violations of the  
5 Textile Act and the Textile Rules, and are deceptive acts or practices in violation of Section  
6 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

7 **VIOLATIONS OF THE TEXTILE ACT AND THE TEXTILE RULES**

8 25. The Textile Act governs, *inter alia*, the labeling and advertising of textile fiber  
9 products manufactured, sold, advertised, or offered for sale in commerce. *See* 15 U.S.C. § 70a.

10 26. Under the Textile Act, a textile fiber product is “misbranded if it is falsely or  
11 deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name  
12 or amount of constituent fibers contained therein.” 15 U.S.C. § 70b(a).

13 27. Pursuant to section 70e of the Textile Act, 15 U.S.C. § 70e(c), the Commission  
14 promulgated the Textile Rules, which state:

15 a. all textile fiber products must carry affixed labels stating the recognized  
16 generic names of the constituent fibers, 16 C.F.R. §§ 303.15; 303.16(a)(1);

17 b. no generic name for a manufactured fiber may be used until such generic  
18 name has been “established or otherwise recognized by the Commission,” 16 C.F.R.  
19 § 303.8;

20 c. “[w]ords, coined words, symbols or depictions, (a) which constitute or  
21 imply the name or designation of a fiber which is not present in the product . . . [may] not  
22 be used in such a manner as to represent or imply that such fiber is present in the  
23 product.” 16 C.F.R. § 303.18. Any term used in advertising, including internet  
24 advertising, that constitutes or connotes the name or presence of a textile fiber is deemed  
25 to be an implication of fiber content, 16 C.F.R. § 303.40; and

26 d. any information or representation included in advertising or labeling of a  
27 textile fiber product that is not required under the Textile Act or the Textile Rules “shall  
28 in no way be false, deceptive, or misleading as to fiber content and shall not include any

1 names, terms, or representations prohibited by the [Textile] Act and regulations.” 16  
2 C.F.R. § 303.42(b); 16 C.F.R. § 303.41(d); *see also* 16 C.F.R. § 303.17.

3 28. A violation either of the Textile Act or of the Textile Rules constitutes an unfair  
4 or deceptive act or practice in violation of the FTC Act. *See* 15 U.S.C. §§ 70a and 70e.

5 **COUNT I**

6 29. As set forth in Paragraphs 8 through 10, Defendant

7 a. markets and sells or has marketed and sold textile fiber products labeled as  
8 “bamboo;” and

9 b. advertises or has advertised the fiber content of textile fiber products using  
10 the terms “bamboo” and “bamboo fiber.”

11 30. In truth and in fact, as set forth in Paragraph 11, in numerous instances these  
12 textile fiber products are not bamboo fiber but instead rayon, a regenerated cellulose fiber.

13 31. Therefore, through the means described in Paragraphs 8 through 10, Defendant  
14 has introduced, advertised, offered for sale, or sold textile fiber products that are mislabeled or  
15 falsely or deceptively advertised, in violation of Sections 70a and 70b of the Textile Act, 15  
16 U.S.C. §§ 70a and 70b, and Sections 303.6, 303.8, 303.16, 303.17, 303.18, 303.33, 303.34,  
17 303.40, 303.41, and 303.42 of the Textile Rules, 16 C.F.R. Part 303.

18 32. Defendant’s violations of the Textile Act and of the Textile Rules constitute  
19 deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the FTC Act.  
20 *See* 15 U.S.C. §§ 70a and 70e.

21 **VIOLATIONS OF PRIOR COMMISSION DETERMINATIONS CONCERNING**  
22 **UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN COMMERCE**

23 33. Pursuant to Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), if the  
24 Commission has determined in a proceeding under section 5(b) of the FTC Act, 15 U.S.C.  
25 § 45(b), that an act or practice is unfair or deceptive by issuing a final cease and desist order  
26 other than a consent order, then a person, partnership, or corporation which engages in such act  
27 or practice with actual knowledge that such act or practice is unfair or deceptive shall be liable  
28 for a civil penalty of not more than \$16,000 for each violation.





1 **CIVIL PENALTIES AND INJUNCTIVE RELIEF**

2 40. Violations of the Textile Act constitute deceptive acts or practices, in or affecting  
3 commerce, in violation of Section 5(a) of the FTC Act. *See* 15 U.S.C. §§ 70a and 70e. The FTC  
4 “is authorized to direct and prevent any person from violating the provisions of the [Textile Act]  
5 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as  
6 though all applicable terms and provisions of the [FTC Act] were incorporated” therein, and any  
7 “person violating the [Textile Act] shall be subject to the penalties” provided in the FTC Act. 15  
8 U.S.C. § 70e(b).

9 41. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to  
10 issue a permanent injunction to restrain violations of the FTC Act, as well as such ancillary relief  
11 as is necessary.

12 42. Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), authorizes the  
13 Court to award monetary civil penalties of not more than \$16,000 for each violation of prior  
14 Commission determinations concerning unfair and deceptive acts or practices in commerce, as  
15 described in Paragraphs 16–24 and 35–38.

16 43. Pursuant to Section 5(m)(1)(B) of the FTC Act, for the purpose of computing civil  
17 penalties, each and every instance that Defendant has introduced, advertised, offered for sale, or  
18 sold a misbranded textile fiber product, since February 2, 2010, constitutes an act or practice that  
19 the Commission has determined in a prior proceeding to be unfair or deceptive.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), and 53(b) and  
22 the Court’s own equitable powers, requests that the Court:

23 1. Enter judgment against Defendant and in favor of Plaintiff for each violation of  
24 the Textile Act and the Textile Rules alleged in this complaint;

25 2. Award Plaintiff monetary civil penalties pursuant to 15 U.S.C. § 45(m)(1)(B);

26 3. Enter a permanent injunction to prevent future violations of the Textile Act and  
27 the Textile Rules; and

28 //

1           4.       Award Plaintiff the costs of bringing this action, as well as such other and  
2 additional relief as the Court may determine to be just and proper.

3  
4 DATED: January 3, 2013

5  
6 Of Counsel:

7 JAMES A. KOHM  
Associate Director for Enforcement

8 ROBERT S. KAYE  
Assistant Director for Enforcement

9  
10 KORIN EWING FELIX  
MEGAN A. BARTLEY  
11 Attorneys  
Federal Trade Commission  
12 600 Pennsylvania Avenue, N.W.  
Mail Drop M-8102B  
13 Washington, D.C. 20580  
(202) 326-3556; kewing@ftc.gov  
14 (202) 326-3424; mbartley@ftc.gov

Respectfully submitted,

STUART F. DELERY  
Principal Deputy Assistant Attorney General

MAAME EWUSI-MENSAH FRIMPONG  
Deputy Assistant Attorney General

MICHAEL S. BLUME  
Director

/s/ Shannon L. Pedersen  
SHANNON L. PEDERSEN  
Trial Attorney  
Consumer Protection Branch  
U.S. Department of Justice  
P.O. Box 386  
Washington, DC 20044  
Tel: (202) 532-4490  
Fax: (202) 514-8742  
Shannon.L.Pedersen@usdoj.gov