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.

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-

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

on its invoice, dated September 4, 1963, covering a sale of ribbon, including Pattern 4520, to Macy's (CX 1A and B). As found in Paragraph numbered 7 above, the labels on Pattern 4520 were misbranded and, therefore, corporate respondent's guaranty under the invoice (CX 1A and B) was false, in violation of Section 10 of the Act, as alleged in the complaint.

9. Corporate respondent's sales of Pattern 4520 Nyvel ribbon are substantial. Its gross sales of Pattern 4520 ribbon for the year 1964 were approximately $42,000, or about 6% of its total gross sales of ribbon for the entire year 1964. For the years 1959 to 1963, sales of Pattern 4520 constituted from approximately 1% to approximately 3% of the total gross sales of ribbon sold by corporate respondent. (Letter dated June 17, 1965, from corporate respondent to Michael P. Hughes, Esq., received in evidence by the hearing examiner by order dated July 14, 1965, and erroneously designated Respondent Exhibit 10.)

10. Although corporate respondent admits the false labeling charges in the complaint, it says that they were inadvertent on its part because the false labels were placed on the ribbon by Vischer & Co., a Swiss manufacturer, from whom corporate respondent purchased the ribbon; that corporate respondent relied on Vischer & Co. to label the ribbon correctly; that corporate respondent was not aware of the mislabeling until so advised by a representative of the Federal Trade Commission in March, 1964; and that, thereafter, corporate respondent took immediate steps to correct the mislabeling.

11. Corporate respondent further says that it sells more than 100 types of ribbon, of which 89 are imported from Switzerland, France, and Germany, including 7 purchased from Vischer & Co., and it is only one ribbon out of all of these that the Commission claims is mislabeled. Corporate respondent further says that a variance of 8% more or less in the textile fiber content of the ribbon involved here would not make any difference to a purchaser, and, besides, corporate respondent did not intend to deceive anyone. Finally, corporate respondent says that it is now under new ownership and management, the false labeling complained about has been corrected, and no order should be entered against the respondents. Each respondent requests that no order be issued against Dorothy Nitsch neither as an officer of corporate respondent nor in her individual capacity.

12. Corporate respondent prays that, in the event the Commission decides that a cease and desist order should be issued against

it, the order should be a narrow one, limited to those ribbons imported by corporate respondent from Vischer & Co., and not a broad order, proscribing all violations of the Textile Fiber Products Identification Act by corporate respondent in the future.

13. The Textile Fiber Products Identification Act was passed by the Congress for the purpose, among other things, of protecting producers and consumers against misbranding and false advertising of the fiber content of textile fiber products. The evidence shows, and corporate respondent admits, that it advertised and sold textile fiber products (ribbon) which bore false labels as to the percentage of fiber content therein. The false labeling revealed by the evidence does not involve mere isolated instances of misbranding. The evidence shows, and it is found, that corporate respondent had been using the false labels contained on the swatch card (CX 4) and on the ribbon holders (CX 5 and 6) for some years prior to March 24, 1964, when Mr. Rose called at corporate respondent's office to examine its records and pointed out the irregularities in the labeling of Pattern 4520 ribbon. It was not until then that corporate respondent began to take steps to correct the false labeling. However, the labels were not finally corrected until January, 1965. These practices constitute violations of the Act by corporate respondent. The circumstance that the manufacturer placed the false labels on the ribbon and corporate respondent relied on the manufacturer to correctly label the ribbon does not excuse nor relieve corporate respondent from responsibility imposed by the Act. Corporate respondent sold the ribbon which bore the false labels, thereby representing that the ribbon contained 60% nylon and 40% rayon. The purchaser is entitled to receive that which he believes he is getting. Vischer & Co., the manufacturer of the ribbon, is located in Basle, Switzerland, and is not subject to the jurisdiction of the Federal Trade Commission. By advertising and selling ribbon in the United States which bore false labels as to textile fiber content, corporate respondent violated the provisions of the Textile Fiber Products Identification Act.

14. Corporate respondent's lack of intent to violate the Act, while commendable, is not the standard for determining whether a violation of the Act has occurred. A cease and desist order is remedial in purpose, not punitive. The Act does not specify nor provide for degrees of violations. Most of corporate respondent's contentions in confession and avoidance have been answered by the Commission in *Philip Smithline, et al., Trading as Smithline*

Coats and Smithline Coat Co., Docket No. 5560, 45 F.T.C. 79, which was a case involving misbranding under the Wool Products Labeling Act. The two Acts are similar in purpose. In that case, the respondents contended (1) that they did not intend to violate the Wool Products Labeling Act; (2) that, of the thousands of women's coats which they sold during a period of two years, only 137 were mislabeled; and (3) respondents' practice of mislabeling had been discontinued prior to the issuance of the complaint. The Commission held (at p. 87) :

> Where misbranding occurs with respect to products subject to the provisions of the act, the law contemplates corrective action by the Commission regardless of whether such misbranding is based upon wilfulness, negligence, or other causes.
>
> * * * * * * *
>
> It would be an unreasonable burden on those charged with the enforcement of this act and it would likewise make the act ineffective, if sellers charged with misbranding certain wool products could plead as an effective defense the fact that they had sold a large number of other wool products which were not misbranded. . . .

CONCLUSIONS

15. The acts and practices of the corporate respondent, as found herein, are in violation of the Textile Fiber Products Identification Act and the rules and regulations promulgated thereunder, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. The Commission has wide latitude for judgment in shaping the form of a cease and desist order. The corporate respondent requests that any order be limited to those ribbons purchased by corporate respondent from Vischer & Co. Such an order would not be appropriate. Under the facts and circumstances of this case, the following cease and desist order against corporate respondent is necessary and appropriate to assure compliance with the Textile Fiber Products Identification Act in the future; however, no order should issue against the respondent, Dorothy Nitsch, as an officer of corporate respondent nor in her individual capacity.

ORDER

It is ordered, That respondent Taylor-Friedsam Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing, delivering for introduction, selling, advertising, or offering for sale, in commerce, or trans-

porting, causing to be transported in commerce, or importing into the United States, any textile fiber product; or selling, offering for sale, advertising, delivering, transporting or causing to be transported, any textile fiber product which has been advertised or offered for sale in commerce; or the selling, offering for sale, advertising, delivering, transporting, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its 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:

1. Which is falsely or deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

2. Unless each such product has securely affixed thereto a label showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Unless samples, swatches and specimens of said textile fiber product subject to the aforesaid Act which are used to promote or effect sales of such textile fiber product are labeled to show the respective fiber contents and other required information.

It is further ordered, That respondent Taylor-Friedsam Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its 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, do forthwith cease and desist from furnishing a false guaranty that any such textile fiber product is not misbranded or otherwise misrepresented under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the complaint against the respondent Dorothy Nitsch be, and the same hereby is, dismissed.

OPINION OF THE COMMISSION

MARCH 28, 1966

BY DIXON, *Commissioner:*

In a complaint issued on March 8, 1965, respondents were charged with misbranding and falsely guaranteeing textile fiber products in violation of §§ 4(a), 4(b) and 10 of the Textile Fiber Products Identification Act (Textile Act),[1] Rules 21(a) of the Rules and Regulations[2] issued by the Federal Trade Commission under that statute, and the Federal Trade Commission Act.[3] The hearing examiner held in his initial decision that the allegations of the complaint were sustained and ordered the corporate respondent to cease and desist from furnishing false guaranties and engaging in any practices violative of §§ 4(a) and 4(b) of the Textile Act or Rule 21(a). In each of its particulars the order was applicable to "any textile fiber product."

The examiner further ordered the dismissal of the complaint against respondent Dorothy Nitsch. We agree with that disposition and have adopted the relevant findings of the examiner. Thus, hereafter, all references to "respondent" apply to the corporate respondent, Taylor-Friedsam Co., Inc.

Respondent is a wholesale distributor of ribbons, its sole product, to retailers and manufacturers located throughout the United States.[4] It sells approximately 100 ribbon patterns, the majority of which are imported from foreign manufacturers who are not subject to the jurisdiction of the Federal Trade Commission (tr. 180–81). All of respondent's invoices contain a warranty that its ribbons are clearly and truthfully labeled (Answer to Complaint).

Each charge in the complaint arose out of the labeling of one ribbon pattern—No. 4520 Nyvel—imported from Vischer & Company, Inc., a manufacturer in Basle, Switzerland. The labels on both the ribbon holders and the swatch cards used to promote the pattern were marked "60% NYLON—40% RAYON," although the ribbon's actual fiber content was approximately 51% nylon—49% rayon. Thus, there was a substantial component fiber

[1] 15 U.S.C. 70.
[2] 16 C.F.R. § 303.21.
[3] 15 U.S.C. 45.
[4] Respondent is a wholly owned subsidiary of Gottschalk and Company (tr. 127).

overstatement/understatement of about 9% of the total fiber weight of the ribbon.

Respondent, in its answer to the complaint, admitted that the pattern 4520 ribbon holders and swatch cards were incorrectly labeled, but set forth certain mitigating circumstances which it felt justified a dismissal. In its brief on appeal from the initial decision, respondent took exception to the examiner's finding that it had falsely labeled for years and to his failure to make certain findings of facts relating to the question of a need for a broad order. Although it acknowledged that its mislabeling violated the Textile Act and conceded that the Commission could justifiably issue an order, an objection was made to the scope of the order which was entered. Essentially, respondent would have the order apply only to "any ribbon manufactured by Vischer & Company, Inc., of Basle, Switzerland," instead of sweepingly to "any textile fiber product." Thus, in effect, our principal task in this appeal is to make a determination, based on the facts of record, as to the scope of the order, if any, which we should issue.

The Textile Act, like the Fur Products Labeling Act [5] and the Wool Products Labeling Act,[6] was enacted to protect the public against false guaranteeing, mislabeling and other related objectionable practices. The prohibitions in those statutes are absolute. The Acts may be violated despite the absence of actual deception or a tendency to deceive,[7] and regardless of whether the respondent intended or even had knowledge of an illegality.[8] Also, proven violations are not excused even though they could be characterized as technical or trivial [9] or were merely isolated occurrences.[10] Once a violation has been demonstrated, the Commission has wide discretion in choosing an adequate remedy, including an order requiring compliance with all of an Act's provisions relating to the unlawful practice or practices proven.[11] The proper

[5] 15 U.S.C. 69.

[6] 15 U.S.C. 68.

[7] *Samuel A. Mannis & Co.*, 56 F.T.C. 833, 857 (1960) *aff'd* 293 F. 2d 774 (9th Cir. 1961).

[8] *Ibid.* See *Feature Fabrics, Inc.*, 60 F.T.C. 898 (1962). Willfully offering for sale a misbranded textile product in commerce and willfully furnishing a false guaranty for a textile product subjects a seller to possible criminal prosecution (15 U.S.C. 70 (i)); thus, clearly, the issuance of a preventive and remedial cease-and-desist order when a violation is unintentional is not an abuse of the Commission's discretion.

[9] *Mandel Bros.* v. *Federal Trade Commission*, 254 F. 2d 18, 21 (7th Cir. 1958), *rev'd on other grounds*, 359 U.S. 385 (1959); *Paris Neckwear Co.*, 60 F.T.C. 531 (1962); see *Samuel A. Mannis & Co.* v. *Federal Trade Commission*. 293 F. 2d 774 (9th Cir. 1961).

[10] *Hoving Corp.* v. *Federal Trade Commission*, 290 F. 2d 803, 806 (2d Cir. 1961); *The Fair* v. *Federal Trade Commission*, 272 F.2d 609, 613 (7th Cir. 1959). *Paris Neckwear Co., supra*, n. 9.

[11] *Federal Trade Commission* v. *Mandel Bros.*, 359 U.S. 385, 392-3 (1959); *Hunter Mills Corp.* v. *Federal Trade Commission*, 284 F. 2d 70 (2d Cir. 1960), *cert. denied*, 366 U.S. 903 (1961); *The Fair* v. *Federal Trade Commission*, *supra*, n. 10; *Perfect-Fit Prods. Mfg. Co.*, 59 F.T.C. 1112 (1961); *Reliance Wool & Quilting Prods., Inc.*, 56 F.T.C. 543 (1959).

scope of an order "depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in. * * * the question of the extent to which related activity should be enjoined is one of kind and degree." [12]

Our review of the record discloses the following facts concerning respondent's admitted violation of the statute.

On March 24, 1964, a Commission investigator, Mr. C. T. Rose, visited respondent's office for a routine Textile Act record examination. During the course of his examination, Mr. Rose selected some four to eight invoices from respondent's suppliers and compared the information on them with corresponding ribbon labels (tr. 74–77). One such invoice was from Vischer & Company. It listed pattern 4520 as having a fiber content of 60% nylon—40% rayon, *by value*, and 51% nylon—49% rayon, *by weight*. However, on the labels Vischer had designated the fiber content of pattern 4520 by value, rather than by weight as required by the Act. Respondent had printed its swatch cards to correspond to the manufacturer's labels and thus they were similarly wrongly labeled.

When the investigator brought this inconsistency to the attention of respondent's employee, Miss Nitsch, she stated that never before had there been an occasion to suspect Vischer was labeling improperly (tr. 79–80, 108–09). The investigator examined the remaining Vischer invoices and found no other apparent defective labels (tr. 79, 108).

Without further contact with respondent, the investigator in May 1964 purchased two pattern 4520 ribbon holders from one of its retail customers and, subsequently, they were forwarded to the Commission's laboratory for a fiber content examination (tr. 67–8; CX 5–7). The tests confirmed that the ribbon and promotional swatch cards had been mislabeled.

After the investigator's visit, Miss Nitsch immediately ordered new swatch cards printed with labels reading 51% nylon—49% rayon and included in a lengthy letter to Vischer a paragraph asking that the ribbon holder labels be changed from 60% nylon—40% rayon to 51% nylon—49% rayon (tr. 109, 117–18; RX 1). Vischer promptly advised that it had changed the quality of its weaving so that in the future pattern 4520 would contain 53% nylon—47% rayon and promised to mark the labels accordingly (RX 2).

Beginning in August 1964, Miss Nitsch, who had managed respondent for several years, began to be replaced by a Miss Rosalie

[12] *Federal Trade Commission* v. *Mandel Bros.*, *supra*, n. 11.

Thalheimer (tr. 155).[13] At that time Miss Nitsch had made no attempts to ascertain whether Vischer had effectuated the necessary labeling changes (tr. 119). She also failed to alert Miss Thalheimer about the matter. It was not until December 30, 1964, when respondent was served with the Commission's notice of an intention to issue a complaint, that Miss Thalheimer learned there had been a labeling problem (tr. 156–57).

Miss Thalheimer took immediate corrective measures. She ordered the labels on all ribbon holders in stock to be manually changed to read 51% nylon—49% rayon (tr. 159–60). And she wrote directly to Mr. Anthony Vischer informing him that the labeling changes promised the previous April had not been made and requested that he rectify the mislabeling at once (tr. 157–58; RX 3). Vischer's reply was a reassertion that the pattern 4520 fiber percentages had recently been changed to 53% nylon—47% rayon, and he again gave assurances that the labels would be so altered.[14]

After receiving Vischer's letter, Miss Thalheimer ordered new swatch cards printed showing fiber content as 53% nylon—47% rayon and had all ribbon holder labels similarly marked (tr. 162–63). She also obtained a report from the United States Testing Service on the fiber composition of a pattern 4520 specimen imported in late 1964 which confirmed the 51–49 percentages she had previously placed on the labels and swatches of the lot (tr. 169; RX 7).[15]

After the Commission's complaint formally issued, respondent again wrote its supplier to request proper labels so that the extra expense of hand labeling could be avoided (RX 5). By letter of March 22, 1965, the supplier advised respondent that from then on all labels would be marked 53% nylon—47% rayon (RX 6).

Considering these facts, we conclude that respondent's argument in support of a narrow order must be rejected. Although respondent apparently did not violate the law intentionally, it cannot be considered blameless for the mislabeling. As an importing distributor, respondent had an obligation either itself to label

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[13] Respondent's president and owner, Mr. Richard Lee Cash, was not active in the daily operation of the company (tr. 127).

[14] The impression gained from reading Vischer's response is that he believed the labels were then being correctly marked 51% nylon—49% rayon (see RX 4).

[15] Although some ribbon with 51% nylon—49% rayon may have been labeled 53% nylon —47% rayon after the receipt of Vischer's letter, such deviation would have been within the tolerances allowable by the Commission's Rules (Rule 43, 16 C.F.R. § 303.43). Complaint counsel has not challenged the accuracy of any post–1964 labels.

its products properly or to make certain by testing or other means that the labeling furnished by its foreign suppliers was truthful and otherwise in compliance with the Textile Act and the Commission's regulations.[16] However, respondent chose to rely completely upon Vischer to label all ribbons correctly (tr. 102–03). No tests were conducted on the fiber content of pattern 4520 prior to 1965 (tr. 103), even though respondent knew the manufacturer had often changed the component percentages over the years (tr. 116–17). No efforts were made to verify the information printed on labels with that on the supplier's invoices. And, in addition, after receiving notice of the apparent mislabeling, respondent not only continued its reliance upon Vischer, but took no immediate steps either to alter those ribbon holder labels currently held in stock, or to rescind the guaranties extended its customers.

In our judgment, such a history of careless misfeasance demonstrates the need for the issuance herein of an injunctive order substantially broader than one limited only to the products obtained from the supplier, Vischer and Company, Inc.[17] However, we do believe that the examiner's order should be altered in one respect. The violations proved related solely to the merchandising of ribbon, the single type of goods respondent sold, and there is not the slightest suggestion that mislabeling of other textile products might be anticipated. Thus, we are modifying the examiner's order to cover ribbons only.

On the basis of the foregoing, respondent's appeal is denied. To the extent that the hearing examiner's findings are deficient or in error, the initial decision will be modified to conform to the findings embodied herein. An appropriate order will be entered.

Commissioner Elman dissented and has filed a dissenting opinion.

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[16] Pattern 4520 constituted a substantial amount ($42,000 or 6%) of the ribbon respondent distributed in 1964. As we noted in *Alscap, Inc.*, 60 F.T.C. 275, 280 (1962):

The protection afforded by the Act to manufacturers and distributors [respondent's customers], as distinguished from consumers, is additional in that not only should these manufacturers and distributors be certain that what they think they are buying actually is what they are buying, but they should be protected from, in turn, unwittingly making false representations to their purchasers by adopting the representations made to them by their suppliers.

[17] "Commission orders are not designed to punish for past transgressions, but are designed as a means for preventing 'illegal practices in the future.'" *Niresk Industries, Inc.* v. *Federal Trade Commission*, 278 F. 2d 337, 343 (7th Cir.), *cert. denied*, 364 U.S. 883 (1960). See *The Fair* v. *Federal Trade Commission*, 272 F. 2d 609, 613 (7th Cir. 1959), a case arising under the Fur Products Labeling Act where the court sustained the issuance of a broad, all products order that was based upon a misrepresentation of but one fur product.

DISSENTING OPINION

MARCH 28, 1966

BY ELMAN, *Commissioner:*

There is no question in this case that respondent, a wholesale distributor of ribbons, was guilty of a violation of the Textile Act. The prohibitions in the Textile Act against mislabeling are, as the Commission observes, "absolute" and "may be violated despite the absence of actual deception or a tendency to deceive, and regardless of whether the respondent intended or even had knowledge of an illegality. Also, proven violations are not excused even though they could be characterized as technical or trivial or were merely isolated occurrences." (P. 494.) But the question here is not whether the respondent should be "excused," but what kind of an order is necessary to protect the public against recurrence of the violation here found.

The mislabeling here was limited to one of the approximately 100 ribbon patterns sold by respondent. That pattern was imported from Vischer, a manufacturer in Switzerland, who attached the labels showing the ribbon's fiber content. As the Commission finds, the labels prepared by Vischer and furnished to respondent were incorrect in that the rayon content was understated by 9% and the nylon content correspondingly overstated. So far as the record shows, the 9% error has no effect either on competition or on consumer protection. There is no difference in the value of the ribbon because of the 9% difference in fiber content, and neither the appearance nor the functional utility of the ribbon is affected thereby.

As appears from the majority opinion, respondent did everything it could to have Vischer make the necessary corrections in the labeling. The Commission finds, however, that because respondent "chose to rely completely on Vischer to label all ribbons correctly," it was guilty of "careless misfeasance." (P. 497.) The Commission also finds that, despite such "careless misfeasance," the order should be limited "solely to the merchandising of ribbon" and should not be extended to other products because "there is not the slightest suggestion that mislabeling of other textile products might be anticipated." (P. 497.) But, it seems to me, there is also not the slightest suggestion that mislabeling of ribbons other than those imported from Vischer might be anticipated. The facts related in the majority opinion demonstrate that the fault here lay with Vischer, not with res-

pondent. And the record also shows that the labels on the ribbon imported from Vischer were corrected by January 1965, before the complaint issued on March 8, 1965. (Finding of Fact 13, I.D., p. 490.)

This is precisely the type of trivial violation which is supposed to be handled under the informal compliance procedures provided in Section 1.21 of the Commission's Rules. In view of respondent's obvious good faith and cooperation with the Commission, just as much could have been achieved by these informal procedures—at a fraction of the cost and in a much shorter time. But if the Commission erred in issuing the complaint in the first place, it does not now have to compound that error by issuing a harsh and punitive order.

The Commission insists that it must choose between the alternatives of dismissing the complaint or issuing a broad order. But the Commission is not confined to these two choices; it has large discretion in fashioning an appropriate remedy. *E.g., Jacob Siegel Co.* v. *F.T.C.*, 327 U.S. 608, 611. In a recent case, where there was found a violation of law far more serious than is involved here, and having much greater impact on competition and consumer protection, the Commission did not find itself compelled to issue a cease and desist order. Instead, it entered a declaratory order which did not preclude the Commission, if future circumstances warranted, from reopening the proceeding and issuing an order to cease and desist. *Furr's, Inc.*, F.T.C. Docket No. 8581, decided October 20, 1965 [68 F.T.C. 584]. I think this is a far more appropriate case for a declaratory order than *Furr's*.

At the very least, the order here should be tailored to the specific violation involved. See *F.T.C.* v. *Mandel Brothers, Inc.*, 359 U.S. 385. So tailored, the order in this case would be limited to ribbon purchased by respondent from Vischer.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent, Taylor-Friedsam Co., Inc., from the hearing examiner's initial decision, and the Commission having fully considered briefs and argument in support thereof and in opposition thereto, and the entire record herein; and

The Commission having determined, for the reasons stated in the accompanying opinion, that respondent's appeal should be denied and that the hearing examiner's findings as to the facts and

order should be modified to conform to the views expressed in said opinion:

It is ordered, That the hearing examiner's initial decision be modified by striking the third through the seventh sentences of finding number 13 and substituting therefor the following:

> The evidence further establishes that corporate respondent did not attempt by testing or by any other means to determine whether the labels furnished by its foreign supplier were in compliance with the Textile Act and the regulations promulgated thereunder. Corporate respondent failed to make such determination even though it was aware that its supplier had often changed the percentages of the component fibers of Pattern 4520 over the years. Moreover, corporate respondent received invoices from its supplier which set forth the proper fiber content of the ribbon by weight as required by the statute. However, corporate respondent did not contact Vischer & Company concerning the incorrect fiber content on the labels until after being contacted by the Commission's investigator. The evidence further establishes that corporate respondent revised its swatch cards after being notified of the mislabeling, but made no changes on the labels of the ribbon then in stock. Although it notified Vischer & Company of the apparent mislabeling after the investigator's visit in March 1964, corporate respondent continued to receive and sell mislabeled ribbon and continued to furnish its customers with guarantees that the ribbon was truthfully labeled until after it received notice of the Commission's intention to issue a complaint in December 1964.

It is further ordered, That the initial decision be additionally modified by striking the order to cease and desist and substituting the following:

ORDER

> *It is ordered,* That respondent Taylor-Friedsam Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from introducing, delivering for introduction, selling, advertising, or offering for sale, in commerce, or transporting, causing to be transported in commerce, or importing into the United States, any textile fiber ribbon; or selling, offering for sale, advertising, delivering, transporting or causing to be transported, any textile fiber

ribbon which has been advertised or offered for sale in commerce; or the selling, offering for sale, advertising, delivering, transporting, or causing to be transported, after shipment in commerce, any textile fiber ribbon, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber" are defined in the Textile Fiber Products Identification Act:

1. Which is falsely or deceptively stamped, tagged, labeled, invoiced, advertised or otherwise identified as to the name or amount of constituent fibers contained therein.

2. Unless each such product has securely affixed thereto a label showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

3. Unless samples, swatches and specimens of said textile fiber product subject to the aforesaid Act which are used to promote or effect sales of such textile fiber product are labeled to show the respective fiber contents and other required information.

It is further ordered, That respondent Taylor-Friedsam Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber ribbon; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber ribbon which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber ribbon, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from furnishing a false guaranty that any such textile fiber ribbon is not misbranded or otherwise misrepresented under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the complaint against the respondent, Dorothy Nitsch, be, and it hereby is, dismissed.

It is further ordered, That the hearing examiner's initial decision of September 20, 1965, as modified herein and as modified and supplemented by the accompanying opinion, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist set forth herein.

Commissioner Elman dissented and has filed a dissenting opinion.

IN THE MATTER OF

THE ATLANTIC COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8677. Complaint, Jan. 11, 1966—Decision, Mar. 31, 1966

Consent order requiring three operators of retail grocery stores in the Chattanooga, Tenn., area, to cease coercing or intimidating retail outlets to refuse to deal with members of a beer wholesalers organization.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent The Atlantic Company, hereinafter sometimes referred to as Atlantic, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with principal business offices at 106 Washington Street, Viaduct, Atlanta, Georgia. Through its E–Z Food