

Complaint

60 F.T.C.

any corporate or other device, in the course of business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for advertising or any other services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of hand creams and related products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution of such products.

It is further ordered, That the respondent herein 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 this order.

IN THE MATTER OF
TRANSAIR, INC., ET AL.

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

Docket 8409. Complaint, June 1, 1961—Decision, Apr. 5, 1962

Order requiring sellers of women's shoes and wearing apparel in Hollywood, Calif., to cease violating the Federal Trade Commission Act by advertisements in newspapers, magazines, and catalogs which read in part: "VALUES TO \$39.95 EACH! 3 PAIRS BRAND NEW SHOES . . . ONLY \$9.95" along with depictions of women's late style shoes with well-known brand names, ". . . Petite Panties . . . Imported from France", and "Thousands of beautiful blouses . . . all gorgeous imports . . .", when the shoes offered were not late style or of the name brands listed and the lingerie and some of the blouses were not imports; and by stating falsely "you must be 100% satisfied . . . or your money back"; and to cease violating the Textile Fiber Products Identification Act by failing to label women's wearing apparel as required and to maintain proper records showing the fiber content of the textile fiber products they manufactured.

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 Transair, Inc., and Prudential

Manufacturing, Inc., corporations, and Morris Kaplan, individually and as an officer of said corporations, 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 Barilen Corp., a corporation, and Harold C. Schlosberg, individually and as an officer of said Barilen Corp., and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company, hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission 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 in that respect as follows:

PARAGRAPH 1. Respondents Transair, Inc., and Prudential Manufacturing, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of California with their principal office and place of business located at 1085 North Oxford, Hollywood 29, Calif.

Respondent Morris Kaplan is an officer of the corporate respondents and formulates, directs and controls the acts, policies and practices of the corporate respondents. His address is the same as that of the corporate respondents.

Respondents advertise and sell their merchandise under the names of Maurice de Pree, Maurice of Hollywood and Langfords.

PAR. 2. Subsequent to the effective date of the Textile Fiber Products Identification Act on March 3, 1960, respondents named in paragraph 1 have been and are now engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and 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 had 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, whether in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act.

PAR. 3. Certain of said textile fiber products were misbranded by respondents named in paragraph 1 in that they were not stamped, tagged, or labeled 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, was women's wearing apparel which had no stamp, tag, label or other means of identification on or affixed to such products.

PAR. 4. Respondents named in paragraph 1 have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them, in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

PAR. 5. Respondents named in paragraph 1 in the course and conduct of their business, as aforesaid, were and are in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products.

PAR. 6. The acts and practices of respondents named in paragraph 1 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 constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 7. Respondents Transair, Inc., Prudential Manufacturing, Inc., and their officers, are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of women's shoes and wearing apparel.

PAR. 8. In the course and conduct of their business, respondents now cause, and for sometime last past have caused, their said apparel and shoes, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 9. Respondent Barilen Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 730 Third Avenue, New York, N.Y.

Respondent Harold C. Schlosberg is an officer of respondent Barilen Corp. He formulates, directs and controls the acts, policies and practices of the corporate respondent. His address is the same as that of the corporate respondent.

Respondents Nathan Katz, Miles Shafferman and Jack Blagman are individuals and copartners trading as The Blackwood Company with their office and principal place of business located at 480 Lexington Avenue, New York, N.Y.

Respondents Barilen Corp. and The Blackwood Company are advertising agencies of the respondents Transair, Inc., and Prudential Manufacturing, Inc., who place and pay for the advertisements supplied by Transair, Inc., and Prudential Manufacturing, Inc., in newspapers and magazines and receive a percentage of proceeds of sales of merchandise resulting from said advertisements.

All of the respondents collaborate in carrying out the acts and practices hereinafter set forth.

PAR. 10. In the course and conduct of their business, and for the purpose of inducing the sale of said women's apparel and shoes, respondents have made certain statements with respect to the importation, the brand, and the style of certain of their products and the refund to purchasers of money paid therefor, in advertisements in newspapers, magazines and catalogs of which the following are typical:

GRAB BAG FANTASY!
VALUES TO \$39.95 EACH!
3 PAIRS BRAND NEW SHOES
EACH PAIR DIFFERENT
ONLY \$9.95
FOR ALL THREE PAIRS

THIS IS PROBABLY THE MADDEST SALE OF DRESS
SHOES OF ALL TIME—AND VERY LIKELY THE
MOST FANTASTIC BARGAIN YOU'LL EVER GET.
* * * REMEMBER EACH PAIR OF SHOES IS
BRAND NEW . . .

(Depiction of women's late style shoes with brand names such as I. Miller, Palizzio, Delman, De Liso Debs, etc.)

. . . Petite Panties . . .
Imported from France
Thousands of beautiful blouses . . . all
gorgeous imports . . .

PAR. 11. Through the use of the aforesaid statements and depictions respondents represented:

1. That the purchaser will receive late style shoes similar to those depicted, each pair being one of the name brands listed.
2. That said lingerie is imported from France.
3. That all of said blouses are imported into the United States.

Complaint

60 F.T.C.

PAR. 12. Said statements and representations were false, misleading and deceptive. In truth and in fact:

1. The shoes offered in the advertisement were not late style shoes similar to those depicted and each pair was not one of the name brands listed.

2. Said lingerie was not imported from France but was manufactured in this country.

3. Certain of said blouses were not imported but were manufactured in this country.

PAR. 13. Respondents used such statements as "you must be 100% satisfied as to fit or quality or every penny will be refunded", "you must be 100% satisfied as to fit or quality or your money back" thereby representing that the purchase price will be refunded voluntarily and promptly to the purchaser upon demand.

PAR. 14. Said statements and representations were false, misleading and deceptive. In truth and in fact, the purchase price of merchandise is seldom refunded upon demand of the purchaser except after intervention of the Better Business Bureaus in the purchaser's behalf.

PAR. 15. Respondents Transair, Inc., and Prudential Manufacturing, Inc., in the conduct of their business, at all times mentioned herein, have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of women's apparel and shoes of the same general kind and nature as that sold by said respondents.

PAR. 16. Respondents Barilen Corp. and Harold C. Schlosberg and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company are now, and have been, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising business.

PAR. 17. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 18. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of com-

petition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell for the Commission.

Mr. Howard A. Heffron of *Shapiro & Heffron*, of New York, N.Y., for Barilen respondents; *Mr. Arnold Katz*, of New York, N.Y., for Blackwood respondents; no appearance for other respondents.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

The Federal Trade Commission, on June 1, 1961, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging them with unfair and deceptive acts and practices and unfair methods of competition in commerce in the advertising and sale of women's shoes and wearing apparel in violation of the Federal Trade Commission Act; and charging respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan with violations of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder.

Upon the application of certain of the respondents, the time for answering the complaint as to all respondents was extended to September 15, 1961; and at the same time the initial hearing scheduled in the complaint for August 8, 1961, in Washington, D.C., was postponed and rescheduled for September 26, 1961. All of the parties were duly notified of such extension and postponement. Answer to the complaint was not filed by any respondent; and no appearance was made by or on behalf of any respondent at the hearing which was held on September 26, 1961, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding.

On September 6, 1961, a motion to dismiss, with supporting affidavit, was filed on behalf of respondents Barilen Corp. and Hyman C. Schlosberg (erroneously named in the complaint as Harold C. Schlosberg), which respondents are sometimes herein referred to as the Barilen respondents; and on September 22, 1961, a similar motion to dismiss, with supporting affidavit, was filed on behalf of respondents Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners, trading as The Blackwood Company, which respondents are sometimes herein referred to as the Blackwood respondents. Both the Barilen and the Blackwood respondents requested further extension of time to answer the complaint in the event their motions to dismiss should be denied.

Counsel supporting the complaint appeared at the hearing on September 26, 1961, and stated that he did not desire to offer any evi-

dence in support of the charges of the complaint with respect to the Barilen and Blackwood respondents, and that he did not oppose the motions to dismiss as to those respondents.

At the hearing on September 26, 1961, counsel supporting the complaint stated that negotiations for the purpose of disposing of the charges by a consent order as to respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan were initiated on behalf of those respondents by their counsel (who has not filed a notice of appearance in this proceeding), but that those negotiations were unsuccessful and had been terminated. Counsel supporting the complaint also stated that he advised counsel for those respondents that in the event of their failure to answer the complaint and to appear at the initial hearing, he would ask that they be held in default and that an order to cease and desist be entered against them on that basis.

At the hearing on September 26, 1961, counsel supporting the complaint proposed a form of order (CX 1A and B) which he considered appropriate with respect to respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan, and moved that it be issued on the basis of default by those respondents by reason of their failure to answer the complaint or to appear at the initial hearing. In that order counsel supporting the complaint also proposed that the complaint be dismissed as to the Barilen and the Blackwood respondents.

Upon consideration of the foregoing circumstances disclosed by the record, the hearing examiner grants the motions to dismiss as to the Barilen and Blackwood respondents; and finds that the remaining respondents Transair, Inc., Prudential Manufacturing, Inc., and Morris Kaplan, are in default under the Commission's Rules of Practice by reason of their failure to answer the complaint or to appear at the initial hearing. He now, therefore, issues his initial decision, finding the facts as to the defaulting respondents to be as alleged in the complaint, entering an order considered by him to be warranted by such facts, the order being essentially that proposed at the hearing by counsel supporting the complaint, and dismissing the complaint as to the Barilen and Blackwood respondents.

FINDINGS OF FACT

1. The respondents named in subsections (a) and (b) of this section are the respondents hereafter referred to in these findings.

(a) Respondents Transair, Inc., and Prudential Manufacturing, Inc., are corporations organized, existing and doing business under and

by virtue of the laws of the State of California with their principal office and place of business located at 1085 North Oxford, Hollywood 29, Calif.

(b) Respondent Morris Kaplan is an officer of the corporate respondents and formulates, directs and controls the acts, policies and practices of the corporate respondents. His address is the same as that of the corporate respondents.

(c) Respondents advertise and sell their merchandise under the names of Maurice de Pree, Maurice of Hollywood and Langfords.

2. The corporate respondents and their officers are now, and for some time have been, engaged in the advertising, offering for sale, sale and distribution of women's shoes and wearing apparel.

3. In the course and conduct of their business, respondents now cause, and for some time have caused, their said apparel and shoes, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. 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, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and 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 had 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, whether in their original state or contained in other textile fiber products. As used in this section, the terms "commerce" and "textile fiber products" are intended to have the meanings defined in the Textile Fiber Products Identification Act.

5. In the course and conduct of their business, and for the purpose of inducing the sale of said women's apparel and shoes, respondents have made certain statements with respect to the importation, the brand, and the style of certain of their products and the refund to purchasers of money paid therefor, in advertisements in newspapers, magazines and catalogs of which the following are typical:

Initial Decision

60 F.T.C.

GRAB BAG FANTASY!
 VALUES TO \$39.95 EACH!
 3 PAIRS BRAND NEW SHOES
 EACH PAIR DIFFERENT
 ONLY \$9.95
 FOR ALL THREE PAIRS

THIS IS PROBABLY THE MADDEST SALE OF DRESS
 SHOES OF ALL TIME—AND VERY LIKELY THE
 MOST FANTASTIC BARGAIN YOU'LL EVER GET.
 * * * REMEMBER EACH PAIR OF SHOES IS
 BRAND NEW . . .

(Depiction of women's late style shoes with brand names such as
 I. Miller, Palizzio, Delman, De Liso Debs, etc.)

. . . Petite Panties . . .
 Imported from France
 Thousands of beautiful blouses . . . all
 gorgeous imports . . .

6. Through the use of the aforesaid statements and depictions respondents represented:

- (a) That the purchaser will receive late style shoes similar to those depicted, each pair being one of the name brands listed.
- (b) That said lingerie is imported from France.
- (c) That all of said blouses are imported into the United States.

7. Said statements and representations were false, misleading and deceptive. In truth and in fact:

- (a) The shoes offered in the advertisements were not late style shoes similar to those depicted and each pair was not one of the name brands listed.
- (b) Said lingerie was not imported from France but was manufactured in this country.
- (c) Certain of said blouses were not imported but were manufactured in this country.

8. Respondents used such statements as "you must be 100% satisfied as to fit or quality or every penny will be refunded," "you must be 100% satisfied as to fit or quality or your money back," thereby representing that the purchase price will be refunded voluntarily and promptly to the purchaser upon demand.

9. Said statements and representations were false, misleading and deceptive. In truth and in fact, the purchase price of merchandise is seldom refunded upon demand of the purchaser except after intervention of the Better Business Bureaus in the purchaser's behalf.

10. Certain of said textile fiber products were misbranded by re-

spondents in that they were not stamped, tagged, or labeled 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, was women's wearing apparel which had no stamp, tag, label or other means of identification on or affixed to such products.

11. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

12. The corporate respondents and their officers in the conduct of their business, at all times mentioned herein, have been in substantial competition, in commerce with corporations, firms and individuals in the sale of women's apparel and shoes of the same general kind and nature as sold by respondents; and have been in substantial competition in commerce with corporations, firms and individuals likewise engaged in the manufacture and sale of textile fiber products.

13. The use by respondents, as hereinabove found, of the false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief; and the misbranding of textile fiber products by respondents, and the failure of respondents to maintain proper records of such products, as hereinabove found, have contributed to the deceptive capacity and tendency of their practices in connection with such products. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

CONCLUSIONS

The aforesaid acts and practices of respondents, as herein found, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

The misbranding of textile fiber products by respondents, and the failure of respondents to maintain proper records showing the fiber

content of such products manufactured by them, as herein found, were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

1. *It is ordered*, That respondents Transair, Inc., and Prudential Manufacturing, Inc., corporations, and their officers, and Morris Kaplan, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's shoes, women's wearing apparel, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

a. Representing, directly or by implication, that women's shoes, or any other product, are of a certain brand or style, or that they have any other attribute, unless such is the fact.

b. Representing, directly or by implication, that women's blouses, lingerie, or any other products, are imported, unless such is the fact.

c. Representing, directly or by implication, that respondents will make refunds for unsatisfactory goods or merchandise unless such refunds are made promptly upon demand by the purchaser.

2. *It is further ordered*, That respondents Transair, Inc., and Prudential Manufacturing, Inc., corporations, and their officers, and Morris Kaplan, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the introduction, delivery for introduction, manufacture 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 textile fiber products, or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of textile fiber products which have 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 textile fiber products, whether in their original state or contained in other textile fiber products (as "commerce" and "textile fiber products" are defined in the Textile Fiber Products Identification Act), do forthwith cease and desist from:

a. Misbranding textile fiber products by :

(1) Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein;

(2) Failing to affix labels to such products showing each element of information required to be disclosed by Section 4(b) of the Textile Fiber Products Identification Act.

b. Failing to maintain records of fiber content of textile fiber products manufactured by them, as required by Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations thereunder.

3. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to Barilen Corp., a corporation, and Hyman C. Schlosberg (erroneously named in the complaint as Harold C. Schlosberg), individually and as an officer of said corporation, and Nathan Katz, Miles Shefferman and Jack Blagman, individually and as copartners trading as The Blackwood Company.

FINAL ORDER

The Commission by its order of November 7, 1961, having placed this case on its own docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed October 5, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents, Transair, Inc., a corporation, and Prudential Manufacturing, Inc., a corporation, and Morris Kaplan, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.
