

FEDERAL TRADE COMMISSION DECISIONS

**FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1972, TO
DECEMBER 31, 1972**

IN THE MATTER OF

BAAR AND BEARDS, INC., ET AL.

**CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS**

Docket C-2238. Complaint, July 3, 1972—Decision, July 3, 1972.

Consent order requiring a New York City importer and wholesaler of women's apparel and manufacturer of women's scarves to cease, among other things, manufacturing for sale, importing, selling, or distributing any product, fabric, or related material which fail to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Baar and Beards, Inc., a corporation, and Stanley M. Finkel, 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 Flammable Fabrics Act, as amended, 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. Respondent Baar and Beards, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Stanley M. Finkel is an officer of said corporate respondent. He formulates, directs, and controls the acts, practices and policies of said corporation.

Respondents are engaged in the importation and wholesaling of ladies' scarves, sashes, knit hat and scarf sets and fashion accessories and are manufacturers of ladies' scarves which are made of fabric from domestic and foreign sources.

Their office and principal place of business is located at 15 West 37th Street, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as "commerce," and "product," are defined in the Flammable Fabrics Act, as amended, which fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on public record for a period of thirty (30) days, now in further conformity with the

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procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Baar and Beards, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 15 West 37th Street, New York, New York.

Respondent Stanley M. Finkel is an officer of said corporation. He formulates, directs, and controls the acts, practices, and policies of said corporation. His address is the same as that of the corporate respondent.

Respondents are engaged in the importation, manufacturing, sale and distribution of textile products including ladies' scarves.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Baar and Beards, Inc., a corporation and its officers and Stanley M. Finkel, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material, or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products and of the results thereof, (4) any disposition of said products since August 25, 1970 and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein 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 this order.

Complaint

IN THE MATTER OF

TOSHIBA AMERICA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2239. Complaint, July 3, 1972—Decision, July 3, 1972.*

Consent order requiring a New York City importer, distributor, and seller of microwave ovens and its advertising agent, among other things, to cease misrepresenting the Department of Health, Education, and Welfare has issued a final performance standard for microwave oven leakage; misrepresenting the nature and extent to which their products comply with or conform to any governmental, industry or other regulation or standard; misrepresenting respondent's product has been checked or tested for compliance with the proposed radiation emission standard promulgated by the Department of Health, Education, and Welfare; misrepresenting, in any manner, the radiation leakage of any products; and misrepresenting that any private or governmental organization has tested or approved any products.

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 Toshiba America, Inc., a corporation, and Norman, Craig and Kummel, Inc., a corporation, 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 in that respect as follows:

PARAGRAPH 1. Respondent Toshiba America, Inc., 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 4106 Delong Street, Flushing, New York.

PAR. 2. Respondent Norman, Craig and Kummel, Inc., 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 488 Madison Avenue, New York, New York.

PAR. 3. Respondent Toshiba America, Inc., is now, and for some time last past has been, engaged in the importation into the United States, advertising, offering for sale, sale and distribution of microwave ovens and other products to distributors for ultimate sale to retail outlets and then to the general public.

PAR. 4. Respondent Norman, Craig and Kummel, Inc., is now, and for some time last past has been, an advertising agency of Toshiba

America, Inc., and now and for some time last past, has prepared and placed for publication and has caused the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of products of Toshiba America, Inc.

PAR. 5. In the course and conduct of its aforesaid business, respondent Toshiba America, Inc., now causes, and for some time last past has caused, its said products to be imported from Japan into the United States, and when sold, to be shipped from its warehouses to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent Toshiba America, Inc., maintains, and at all times mentioned herein has maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In the course and conduct of their said businesses, respondents Toshiba America, Inc., and Norman, Craig and Kummel, Inc., have disseminated, and caused the dissemination of, certain advertisements concerning said products by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in magazines and newspapers, for the purpose of inducing and which were likely to induce, directly or indirectly the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical and illustrative of said advertisements, but not all inclusive thereof, is the following advertisement which appeared in the Tuesday, July 14, 1970, edition of "Home Furnishings Daily:"

THE TOSHIBA MICROWAVE OVEN IS THE SPACE AGE COOKING UNIT THAT MEETS 1971 STANDARDS NOW.

Your Toshiba Microwave *customers* will come back because their ovens will not! New industry-wide standards for Microwave ovens have been announced by the Department of Health, Education and Welfare. They won't go into effect until July 1, 1971.

But every Toshiba Microwave oven you sell in 1970 will have been checked by Toshiba to make sure it conforms to the new 1971 standards now. No unit will emit more than 5 milliwatts radiation leakage per square centimeter during its useful life.

And that's not all. Toshiba will send a Microwave technician to inspect any oven already in an owner's home, whenever and wherever asked. He'll make any adjustment needed to meet next year's requirements. And he'll affix a seal assuring that the appliance conforms to 1971 HEW standards.

Toshiba Microwave ovens already include the two independently-operated safety door locks the government will demand next year. These twin fail-safe switches turn the oven off the instant the door is opened. In addition, our oven won't operate unless the "on" switch, the timer and the cooking button have all been

activated. And of course it's U.L. and FCC approved. (Followed by the emblem of the Underwriters' Laboratories Inc.)

PAR. 8. By and through the use of the aforesaid statements and representations, and others similar thereto but not expressly set forth herein, respondents represent, and have represented, directly or by implication, that:

1. Sometime prior to the July 14, 1970, date of the above-quoted advertisement, the United States Department of Health, Education and Welfare had announced a final radiation emission standard for microwave ovens under the "Radiation Control Act" that would take effect on July 1, 1971.

2. Toshiba microwave ovens then currently on the market and those that would be on the market during 1970 and available to general distributors and retailers for resale to the purchasing public met the said 1971 radiation emission standard.

3. Every Toshiba microwave oven sold for ultimate retail sale in 1970 will have been checked by Toshiba to make sure that the said standard has been met.

4. No Toshiba microwave oven available for resale during 1970 to the purchasing public would emit more than 5 milliwatts radiation leakage per square centimeter during its useful life.

5. Toshiba microwave ovens have been tested and approved by Underwriters' Laboratories, Inc., and by the Federal Communications Commission with respect to radiation leakage.

PAR. 9. In truth and in fact:

1. The Department of Health, Education, and Welfare had not issued a final proposed radiation emission standard under the "Radiation Control Act" governing microwave oven leakage; rather a draft standard was at that time open to the final comments of the industry and other affected parties until July 22, 1970.

2. Toshiba microwave ovens then currently on the market and available to general distributors and retailers for resale to the purchasing public did not meet the said 1971 proposed radiation emission standard. Tests revealed that a substantial number of said Toshiba microwave ovens substantially exceeded allowable minimum radiation emission levels with the oven door open and with an object inserted into the oven cavity through the wire mesh screen in the oven door.

3. Every Toshiba microwave oven sold for ultimate retail sale in 1970 had not and would not have been checked by Toshiba to make sure that the said proposed radiation emission standard had been met.

4. Certain Toshiba microwave ovens available for resale to the

purchasing public during 1970 did emit more than 5 milliwatts radiation leakage per square centimeter when tested.

5. Toshiba microwave ovens had not been tested and approved by Underwriters' Laboratories, Inc., or by the Federal Communications Commission with respect to radiation leakage. Toshiba microwave ovens had been tested by Underwriters' Laboratories, Inc., and awarded the U.L. Seal for having met fire and electric shock requirements and nothing more. The FCC assigned the microwave band used for the operation of these ovens but had conducted no qualifying tests for radiation leakage.

Therefore, the advertisements referred to in Paragraph Seven and the statements and representations set forth in Paragraphs Seven and Eight were and are false, misleading and deceptive.

PAR. 10. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Toshiba America, Inc., has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of microwave ovens and other products of the same general kind and nature as those sold by respondent Toshiba America, Inc.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Norman, Craig and Kummel, Inc., has been, and now is, in substantial competition, in Commerce, with other advertising agencies.

PAR. 12. 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 consuming public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of said microwave ovens and other products of respondent Toshiba America, Inc., by reason of said erroneous and mistaken belief.

PAR. 13. 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 in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging respondents named in the caption hereof with violation of the Federal Trade Commission Act, and respondents having

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been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

Respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Toshiba America, Inc., 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 4106 Delong Street, Flushing, New York.

Respondent Norman, Craig & Kummel, Inc., 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 919 3rd Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent Toshiba America, Inc., a corporation, its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of microwave ovens or other products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that:

1. The Department of Health, Education and Welfare has issued a final performance standard or standards under the "Radiation Control Act of 1968";

tion Control Act" governing microwave oven leakage which will become effective on a designated date unless such standard or regulation has in fact been officially promulgated and is then officially scheduled to become effective on the represented date; or misrepresenting, in any manner any governmental, industry or other regulation or standard.

2. Every 1970 model Toshiba microwave oven complies with the proposed radiation emission standard promulgated by the Secretary of Health, Education and Welfare pursuant to the "Radiation Control Act;" or misrepresenting, in any manner, the nature or extent to which any products comply with or conform to any governmental, industry or other regulation or standard.

3. Every 1970 model Toshiba microwave oven has been tested or checked by Toshiba for compliance with the proposed radiation emission standard promulgated by the Secretary of Health, Education and Welfare pursuant to the "Radiation Control Act;" or misrepresenting, in any manner, the nature or extent to which any products have been tested to determine compliance with or conformity to any governmental, industry or other regulation or standard.

4. Every 1970 model Toshiba microwave oven available for resale to the purchasing public does not emit more than 5 milliwatts radiation leakage per square centimeter; or misrepresenting, in any manner, the radiation leakage of any products.

5. 1970 model Toshiba microwave ovens have been tested for radiation leakage and have been approved by either Underwriters' Laboratories, Inc., or by the Federal Communications Commission; or misrepresenting, in any manner, that any private or governmental organization has tested or approved any products.

II

It is further ordered, That respondent, Norman, Craig & Kummel, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale or distribution of microwave ovens or other microwave products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication, the issuance and effectiveness of any governmental, industry or other regulation or standard when respondent, Norman, Craig & Kummel, Inc., knew

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or should have known that such representation was false or deceptive;

2. Representing directly or by implication that any such product complies with or conforms to any governmental, industry or other regulation or standard, when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

3. Representing directly or by implication the nature or extent to which any such product has been tested to determine compliance with or conformity to any governmental, industry or other regulation or standard when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

4. Representing directly or by implication the radiation leakage of any product when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive;

5. Representing directly or by implication that any such product has been tested or approved by any private or governmental program when respondent, Norman, Craig & Kummel, Inc., knew or should have known that such representation was false or deceptive.

III

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their operating departments, divisions and subsidiaries engaged in the advertising, offering for sale, sale or distribution of consumer products manufactured or imported by Toshiba America, Inc.

It is further ordered, That respondent Toshiba America, Inc., deliver a copy of this order to each of its nonsubsidiary distributors and retailers, with whom Toshiba deals directly, engaged in the advertising, offering for sale, sale or distribution of microwave ovens and other consumer products manufactured or imported by Toshiba America, Inc.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent herein shall within sixty

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(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

THE MEKELBURG CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2240. Complaint, July 3, 1972—Decision, July 3, 1972.

Consent order requiring a New York City importer and jobber of various close-out products, including scarves, to cease importing, selling or transporting products which fail to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Mekelburg Co., Inc., a corporation, and Joseph Mekelburg, 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 Flammable Fabrics Act, as amended, 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. Respondent the Mekelburg Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 118 West 27th Street, New York, New York.

Respondent Joseph Mekelburg is an officer of the aforesaid corporation. He formulates, directs and controls the acts, practices and policies of said corporation. His address is the same as that of the corporate respondent.

Respondents are importers and jobbers of various close-out products including scarves.

PAR. 2. Respondents are now and for some time last past have been engaged in the sale and offering for sale, in commerce, and in the

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importation into the United States, and have introduced, delivered for introduction, transported and caused to be transported in commerce and have sold or delivered after sale or shipment in commerce, products as the terms "commerce" and "product" are defined in the Flammable Fabrics Act, as amended, which products failed to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder; and constituted and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent the Mekelburg Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 118 West 27th Street, New York, New York.

Respondent Joseph Mekelburg is an officer of the Mekelburg Co., Inc., a corporation. He formulates, directs and controls the acts, practices and policies of said corporation. His address is the same as that of said corporation.

Respondents are importers and jobbers of various closeout products including scarves.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents the Mekelburg Co., Inc., a corporation, its successors and assigns, and its officers, and Joseph Mekelburg, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce any product, fabric or related material; or selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' inten-

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tions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since December 31, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than one square yard in size of any such product, fabric or related material with this report.

It is further ordered, That the respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF

EGETAEPER, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-2241. Complaint, July 3, 1972—Decision, July 3, 1972.

Consent order requiring a New York City importer, manufacturer and seller of
rugs and carpets, to cease, among other things, manufacturing for sale, sell-

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ing, importing or transporting any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Egetaepper, Inc., a corporation, and Preben Harton, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended; 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. Respondent Egetaepper, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondent Preben Harton, is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture, importation and sale of carpets and rugs, with their principal place of business located at 1919 3rd Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and the importation into the United States and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were carpets and rugs Design Kala 05 subject to Department of Commerce Standard For The Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Division of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, and the Flammable Fabrics Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Egetaeppe, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Preben Harton is an officer of the said corporation. He formulates, directs, and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture, importation and sale of carpets and rugs, with the office and principal place of business of respondents located at 919 3rd Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Egetaeppe, Inc., a corporation, its successors and assigns, and its officers, and respondent Preben Harton, individually and as an officer of said corporation and respondents'

agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "products," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since January 3, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent

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such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

IN THE MATTER OF

PIZITZ, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-2242. Complaint, July 3, 1972—Decision, July 3, 1972.

Consent order requiring a Birmingham, Alabama, department store to cease falsely representing that any price of its fur products is a former price when said price is in excess of regular retail price; misrepresenting the amount of savings to the purchaser; misrepresenting the price of such product as reduced; and failing to maintain full and adequate records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Pizitz, Inc., a corporation, and Richard A. Pizitz, 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 Fur Products Labeling 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. Respondent Pizitz, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at 1821 Second Avenue, North, Birmingham, Alabama.

Respondent Richard A. Pizitz is an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices

of the said corporate respondent including those hereinafter set forth. Respondents operate a department store and retail various commodities including fur products.

PAR. 2. Respondents are now, and for some time last past have been engaged in the introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were falsely and deceptively advertised in violation of the Fur Products Labeling Act in that certain advertisements intended to aid, promote and assist directly and indirectly in the sale and offering for sale of such fur products were not in accordance with the provisions of Section 5(a) of the said Act.

Among and included in the aforesaid advertisements, but not limited thereto, were advertisements of the respondents which appeared in issues of "The Birmingham News," a newspaper published in the city of Birmingham, State of Alabama, and having a wide circulation in Alabama and in other States of the United States.

Also among and included in the aforesaid advertisements, but not limited thereto, were printed sales brochures sent through the United States mail, to prospective customers of the respondents residing in the State of Alabama and other States of the United States.

PAR. 4. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised fur products, in violation of Section 5(a)(5) of the Fur Products Labeling Act and Rule 44(a) of the rules and regulations promulgated thereunder by representing, directly or by implication, that the prices of such fur products were reduced from respondents' former prices and the amount of such purported reductions constituted savings to purchasers of respondents' fur products. In truth and in fact, the alleged former prices were fictitious in that they were not actual, bona fide prices at which respondents offered the products to the public on a regular basis for a reasonably substantial period of time in the recent regular course of business and the said fur products were not reduced in price as represented and savings were not afforded purchasers of respondents' said fur products, as represented.

PAR. 5. In advertising fur products for sale, as aforesaid, respondents made pricing claims and representations of the types covered

Decision and Order

by subsections (a), (b), (c) and (d) of Rule 44 of the regulations under the Fur Products Labeling Act. Respondents in making such claims and representations failed to maintain full and adequate records disclosing the facts upon which such claims and representations were based, in violation of Rule 44(e) of said rules and regulations.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the rules and regulations promulgated thereunder and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Fur Products Labeling Act and the implementing regulations promulgated thereunder; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Pizitz, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its offices and principal place of business is located at 1821 Second Avenue, North, Birmingham, Alabama.

Respondent Richard A. Pizitz is an officer of said corporation. He

formulates, directs and controls the policies, acts and practices of the corporate respondent including those hereinafter referred to. The address of Richard A. Pizitz is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Pizitz, Inc., a corporation, its successors and assigns, and its officers, and Richard A. Pizitz, individually and as an officer of Pizitz, Inc., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively advertising any fur product through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of any such fur product and which:

1. Represents, directly or by implication, that any price whether accompanied or not by descriptive terminology is the respondents' former price of such fur product when such price is in excess of the price at which such fur product has been sold or offered for sale in good faith by the respondents on a regular course of business, or otherwise misrepresents the price at which such fur product has been sold or offered for sale by respondents.

2. Falsely or deceptively represents that savings are afforded to the purchaser of any such fur product or misrepresents in any manner the amount of savings to the purchaser of such fur product.

3. Falsely or deceptively represents that the price of any such fur product is reduced.

B. Failing to maintain full and adequate records disclosing the facts upon which pricing claims and representations of the types described in subsections (a), (b), (c) and (d) of Rule 44 of the

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The rules and regulations promulgated under the Fur Products Labeling Act, are based.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, Pizitz, Inc., such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation, Pizitz, Inc., shall forthwith distribute a copy of the order to each of its operating divisions.

It is further ordered, That respondents herein 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 this order.

IN THE MATTER OF

PFIZER INC.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8819. Complaint, July 6, 1970—Decision, July 11, 1972.

Order affirming the hearing examiner's initial decision dismissing the complaint against a New York City manufacturer of a nonprescription product recommended for use on minor burns and sunburn.

Opinion of the Commission resolves the general issue that the failure to possess a reasonable basis for affirmative product claims constitutes an unfair practice in violation of the Federal Trade Commission Act.

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 Pfizer Inc., a corporation, hereinafter referred to as respondent, has 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 in that respect as follows:

PARAGRAPH 1. Respondent Pfizer Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located

at 235 East 42nd Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and for some time past has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a preparation for sunburn treatment called "Un-Burn" and other proprietary drugs and products to retailers for resale to the public.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time past has caused, its said products, when sold, to be shipped from its plants and facilities to purchasers thereof located in various states other than the state of origination, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, respondent has made and continues to make in print advertisements, including product packages and labels, and other promotional material and in television and radio broadcasts transmitted by television and radio stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across the state lines, numerous statements and representations respecting the pain relieving properties of said product when used by persons suffering from sunburn.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

In radio and television broadcasts:

1. New Un-Burn actually anesthetizes *nerves* in sensitive sunburned skin.
2. Un-Burn relieves pain *fast*. Actually *anesthetizes nerves* in sensitive sunburned skin.
3. Sensitive skin * * * Sunburned skin is sensitive skin. Sensitive sunburned skin needs * * * UN-BURN. New UN-BURN contains the same local anesthetic doctors often use. * * * Actually anesthetizes nerves in sensitive sunburned skin. I'll tell you what I like about UN-BURN. It's the best friend a blonde ever had! * * * I'm a blonde * * * and I know what it means to have sensitive skin. Why, I'm half afraid of moon burn! That's why I'm mad about UN-BURN. It stops sunburn pain in * * * less time than it takes me to slip out of my bikini. That's awfully nice to know when you're the sensitive type. * * *

On labels: "UN-BURN" comprehensive treatment for "sunburn" * * * relieves pain * * * anesthetic. * * *

PAR. 5. By making the above-quoted statements, and others similar thereto, but not expressly set forth herein, respondent represents, and has represented, directly or by implication, that each of the statements respecting the pain relieving properties of the said product has been substantiated by respondent by adequate and well-controlled scientific studies or tests prior to the making of such statements.

PAR. 6. In truth and in fact, the aforesaid statements respecting the said product, "Un-Burn," have not been substantiated by respondent by adequate and well-controlled scientific studies or tests prior to the making of such statements.

Therefore, the representation as set forth in Paragraph Five hereof was and is false, misleading and deceptive.

PAR. 7. The making of any statement or representation, directly or by implication, that Un-Burn will actually anesthetize nerves in sensitive sunburned skin, or any other statement or representation regarding the performance or effectiveness of such product, when such statement or representation is not supported by prior, fully documented, adequate and well-controlled scientific studies or tests is in itself an unfair practice.

PAR. 8. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of sunburn remedies of the same general kind and nature as that sold by respondent.

PAR. 9. The use by respondent of the aforesaid 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 purchase of substantial quantities of respondent's product. As a result thereof, substantial trade has been and is being unfairly diverted to respondent from its competitors.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Edward F. Downs and *Mr. Stuart Lee Friedel* supporting the complaint.

Mr. Roy L. Reardon, Mr. William J. Manning, Mr. Melwyn L. Cantor, Mr. Charles E. Koob, of Simpson Thacher & Bartlett, New York, New York, and Mr. Charles F. Hagen for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

APRIL 16, 1971

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