

Synopsis of Federal Trade Commission Decisions
Concerning Textile Fiber Products

In a series of litigated decisions, the Commission has held that manufacturers and sellers of textile fiber products must comply with the Textile Fiber Products Identification Act, 15 U.S.C. § 70, *et seq.* ("Textile Act"), and the rules and regulations promulgated thereunder, 16 C.F.R. Part 303 ("Textile Rules"). Failure to do so constitutes a violation both of the Textile Act and the Textile Rules, as well as a deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

As a general matter, in these decisions the Commission has determined that it is an unfair or deceptive act or practice in violation of both Section 5 of the FTC Act and the Textile Act:

1. to falsely or deceptively stamp, tag, label, invoice, advertise, or otherwise identify any textile fiber product with respect to the name or amount of constituent fibers contained therein, *see Verrazzano Trading Corporation, et al.*, 91 F.T.C. 888 (1978); *H. Myerson Sons, et al.*, 78 F.T.C. 464 (1971); *Taylor-Friedsam Co., Inc., et al.*, 69 F.T.C. 483 (1966); *Transair, Inc., et al.*, 60 F.T.C. 694 (1962); and
2. to fail to affix to a textile fiber product a stamp, tag, label or other means of identification showing in words and figures plainly legible the true percentage of each fiber present, by its true generic name, if the weight of such fiber is 5 per cent or more of the total weight of the product, *see Verrazzano Trading Corporation; H. Myerson Sons; Delco Carpet Mills, Inc.*, 70 F.T.C. 1706 (1966); *Taylor-Friedsam Co., Inc.; Transair, Inc., et al.*, 60 F.T.C. 694 (1962).

Further, in *Transair, Inc., et al.*, 60 F.T.C. 694 (1962), the Commission determined that it is a violation of Section 5 of the FTC Act, the Textile Act, and the Textile Rules for a seller to fail to maintain proper records showing the fiber content of their textile fiber products, as required by Section 6(a) of the Textile Act and Section 303.39 of the Textile Rules.

In *Taylor-Friedsam Co., Inc., et al.*, 69 F.T.C. 483 (1966), the Commission found that the respondents misbranded their textile fiber products in violation of Section 5 of the FTC Act and the Textile Act and Rules by: (1) falsely stating the fiber content on their textile product labels; (2) failing to disclose on their textile product labels the true generic names of the fibers present in the textile products; and (3) failing to disclose on their textile product labels the percentage of each such fiber contained in the product. In reaching this decision, the Commission determined that it is an unfair or deceptive act or practice in violation of both Section 5 of the FTC Act and the Textile Act to import and distribute in the United States mislabeled textile fiber products even though the products were mislabeled by a foreign exporter and the importer did not intend to violate the law. The Commission held that an importing distributor has an obligation either to label its products properly or to make certain by testing or other means that the labeling furnished by its foreign suppliers is truthful and otherwise in compliance with the Textile Act and Rules. The Commission explained:

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 which bore false labels as to the percentage of fiber content therein. 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. . . . 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.

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The Textile Act, like the Fur Products Labeling Act and the Wool Products Labeling Act, 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, 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.

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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 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.

(footnotes omitted). The Commission also held that it is a violation of Section 5 of the FTC Act and of the Textile Act and Rules to furnish a false guarantee that a textile fiber product is not misbranded or otherwise misrepresented under the provisions of the Textile Act.

In *Delco Carpet Mills, Inc.*, 70 F.T.C. 1706 (1966), the Commission determined that it is a violation of Section 5 of the FTC Act, the Textile Act, and the Textile Rules to fail to disclose on stamps, tags, labels or other means of identification affixed to textile fiber products the name,

or other identification issued and registered by the Commission, of the manufacturer of the textile fiber products or of one or more persons subject to Section 3 of the Textile Fiber Products Identification Act with respect to such textile fiber products. The Commission also determined that it is a violation of Section 5 of the FTC Act and of the Textile Act and Rules to advertise textile fiber products (in this case, carpets that included both covered textile fibers and exempted backings, fillings, or paddings) in a way that: (1) fails to set forth the fiber content information in such a manner as to indicate that it applied only to the face, pile, or outer surface of the floor coverings and not to the exempted backings, fillings, or paddings; (2) makes disclosures or implications of fiber content while failing to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Act and in the manner and form prescribed by the Textile Rules; (3) uses a fiber trademark without a full disclosure of the fiber content information, required in such advertisement; and (4) uses a fiber trademark without setting forth in immediate conjunction therewith, at least once in the advertisement, the generic name of the fiber in type or lettering of equal size and conspicuousness.

In *H. Myerson Sons, et al.*, 78 F.T.C. 464 (1971), the Commission determined that the respondents misbranded their textile fiber products. At the hearing, the respondents admitted that, if a fabric arrived with a manufacturer's label, the respondents left that label on and that, if a fabric arrived without a label, they did not send those fabrics to a laboratory to be tested as to fabric content. The Commission held that it is an unfair or deceptive act or practice in violation of Section 5 of the FTC Act and the Textile Act and Rules: (1) to misbrand textile fiber products as to the name or amount of the fibers contained therein; (2) to fail to disclose the true percentage of the fibers present by weight; and (3) to fail to disclose the true generic names of the fibers present. The Commission also held that it is a violation of Section 5 of the FTC Act and of the Textile Act and Rules: (1) to use a fiber trademark on labels affixed to textile fiber products without setting forth in immediate conjunction therewith the generic name of the fiber in type or lettering of equal size and conspicuousness; and (2) to use generic names and fiber trademarks on labels, whether required or non-required, without making a full and complete fiber content disclosure, in accordance with the Textile Rules, the first time such generic name or fiber trademark appears on the labels. In making its determination, the Commission held:

respondents sold fabric in their establishment and shipped in interstate commerce fabrics purchased from them that bore marks and labels contrary to the applicable laws and regulations. These laws and regulations are designed to protect not only the knowledgeable purchaser from fabric stores or department stores but also the run-of-the-mill consumer.

In providing for them Congress determined that it would create a system of marking and labeling, which would prevent inadvertent as well as intentional mislabeling, and would supply to the ultimate consumer information on the fabric tag adequate to insure that the consumer knew what fabric he or she was purchasing.

Motive and intent are wholly immaterial in this type of violation as is lack of proof of actual harm to a particular consumer.

In *Verrazzano Trading Corporation, et al.*, 91 F.T.C. 888 (1978), the Commission held that it is a violation of Section 5 of the FTC Act, the Textile Act, and the Textile Rules: (1) to label textile fiber products as containing "50% cotton, 35% polyester, 15% nylon," when, in fact, the products contain substantially different fibers and amounts of fibers; (2) to fail to label textile fiber products with the true generic names of the fibers present; (3) to fail to label textile fiber products with the true percentages of the fibers present, resulting in both overstatements and understatements of fiber content percentages; (4) to falsely set forth or fail to set forth upon invoices of imported textile fiber products required under Section 484 of the Tariff Act of 1930, all information required by the Textile Act to be disclosed in connection with those products; and (5) to falsify or perjure the consignee's declaration required by Section 485 of the Tariff Act of 1930 insofar as it relates to the information required to be disclosed by the Textile Act in connection with textile fiber products. In its decision, the Commission considered the materiality of misrepresentations of fiber content and found that:

Misstatements of the fiber content of fabrics are, by definition 'misrepresentations,' and that misrepresentations of more than de minimis character may be materially misleading is, we think equally clear. The fiber composition of a fabric is likely to affect its perceived value in the eyes of both some manufacturers and some consumers. . . . Misrepresentations of fiber content may thus lead manufacturers and consumers to misestimate the value of the fabrics they are purchasing, as well as their characteristics. We believe, accordingly, that such misrepresentations possess the capacity to mislead consumers materially. . . .

The same conclusion has been reached by Congress when it passed the Wool and Textile Acts. These laws are premised upon a clear determination that accurate fiber content information is an important factor in consumer purchase decisions.

In addition, the Commission determined that the following are unfair or deceptive acts or practices in violation of Section 5 of the FTC Act: (1) misrepresenting the amount by which a fabric will shrink when it is washed; and (2) misrepresenting the amount of constituent fibers contained in a wool or textile fiber product.