

NORA MANELLA
United States Attorney
LEON WEIDMAN
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	CIVIL NO. 97-4085 LGB (RNBx)
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
WESTPOINT STEVENS INC.)	
a corporation,)	
)	
Defendant.)	

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; defendant has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.

2. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(a)(1), 5(m)(1)(B), 9, 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), 49, 53(b), and 56(a) and the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. §§ 70-70k.

CIVIL PENALTY

3. Defendant WestPoint Stevens Inc., its successors and assigns, shall pay to plaintiff a civil penalty, pursuant to Section 5(m)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(B), in the amount of \$360,000.

4. Defendant shall make the payment required by Paragraph 3 within five (5) days of the date of entry of this Consent Decree by certified or cashier's check made payable to the Treasurer of the United States and delivered to: The Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 for appropriate disposition.

5. In the event of any default in payment, which default continues for ten days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

INJUNCTION

6. Defendant, its successors and assigns, and its officers, agents, servants, employees and attorneys, and all persons in active

concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from ever directly or through any corporation, subsidiary, division or other device:

a. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying a "textile fiber product" as to the name or amount of constituent "fiber(s)" contained therein, as the terms "textile fiber product" and "fiber" are defined in Sections 2(b) and 2(h) of the Textile Act, 15 U.S.C. § 70, or as the law may hereafter be amended; and

b. Furnishing a "guaranty," as that term is described in Section 10(a) of the Textile Act, 15 U.S.C. § 70h, or as the law may hereinafter be amended, that is false in that any textile fiber product covered by the guarantee is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein; provided, however, that defendant and its subsidiaries shall continue to have the benefit of the exception with respect to guaranties received in good faith from another as set forth in Section 10(b) of the Textile Act, 15 U.S.C. § 70h, and of the exemptions set forth in Section 12 of the Textile Act, 15 U.S.C. § 70j, or as these exemptions may hereafter be amended.

PERSONS AFFECTED; CONTINUING JURISDICTION

7. Defendant, its successor and assigns, shall, within thirty

conferral of an intellectual property license) that engages in any acts or practices subject to this Consent Decree, (2) any proposed creation or dissolution of a subsidiary or an affiliate that engages in any acts or practices subject to this Consent Decree, (3) any proposed filing of a bankruptcy petition by the defendant or by any subsidiary or affiliate that engages in any acts or practices subject to this Consent Decree, (4) any proposed change in corporate name or address, by the defendant or by a subsidiary or affiliate that engages in any acts or practices subject to this Consent Decree, and (5) any proposed change in corporate structure that may affect compliance obligations arising out of the Consent Decree, at least thirty days before such proposed action is to take place. Provided, however, that, where defendant learns about a proposed action (other than the emergence of a successor or assign as described above), less than thirty days beforehand, defendant must notify the Regional Director of the Los Angeles Regional Office as soon as is practicable under the circumstances, but, in any case, no later than ten days after the action occurs. Provided, further, anything to the contrary herein notwithstanding, no notice shall be required under this paragraph with respect to the sale or assignment of inventory in the ordinary course of business.

10. This action, and the relief awarded herein, is in addition to and not in lieu of other remedies as may be provided by law, including both civil and criminal remedies. This settlement, however, is in full satisfaction of all claims asserted by the Federal Trade Commission in the Complaint filed in this action, and

is contingent on the filing of the Complaint which is attached as Exhibit A.

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11. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant, pursuant to all the terms and conditions recited above.

Dated this _____ day of _____, 19__.

UNITED STATES DISTRICT JUDGE

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The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

FOR THE UNITED STATES OF AMERICA

FOR THE FEDERAL TRADE
COMMISSION

FRANK W. HUNGER
Assistant Attorney General
Civil Division
U.S. Department of Justice

ANN JONES
Regional Director
Los Angeles Regional
Office

NORA MANELLA
United States Attorney
Central District of California
By: _____
Assistant U.S. Attorney

RUSSELL DEITCH
Attorney

EUGENE M. THIROLF
Director
Office of Consumer Litigation

By: _____
Attorney, Office of Consumer
Litigation, Civil Division,
U.S. Department of Justice,
Washington, D.C. 20530

FOR THE DEFENDANT:

JEFFREY A. LEVEE
Jones, Day, Reavis & Pogue

555 West Fifth Street
Suite 4600
Los Angeles, California 90013
Attorney for WestPoint Stevens Inc.

M. CLAYTON HUMPHRIES, JR.
Vice President and
General Counsel, WestPoint Stevens Inc.

WESTPOINT STEVENS INC.

I, M. Clayton Humphries, Jr., do hereby certify that the following is a complete, true and correct copy of certain resolutions of the Board of Directors of WestPoint Stevens Inc., a corporation duly organized and existing under the laws of the State of Delaware, which resolutions were duly adopted at a duly called meeting of the said Board held on February 13, 1997, a quorum being present, and is set forth in the minutes of said meeting; and that the said resolutions have not been rescinded or modified:

RESOLVED, That M. Clayton Humphries, Jr., and Jones, Day Reavis and Pogue are unauthorized to enter into the Consent Decree between WestPoint Stevens Inc. and the Federal Trade Commission in the form attached hereto: and

FURTHER RESOLVED, That the officers of the Company be, and they are each hereby, authorized and empowered to execute and deliver such other documents and to do such other acts as they deem appropriate and necessary to effectuate the intent of the preceding resolution.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation, this 13th day of February 1997.

Assistant Secretary

REASONS FOR SETTLEMENT

This statement accompanies the Consent Decree executed by defendant WestPoint Stevens Inc. in settlement of an action brought to recover penalties and other equitable relief from defendant for engaging in acts or practices in violation of the Textile Fiber Products Identification Act, 15 U.S.C. § 70.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended (15 U.S.C. § 45(m)(3)), the Commission hereby sets forth its reasons for settlement by entry of a Consent Decree and injunction:

On the basis of the allegations contained in the attached Complaint, the Commission believes that the payment of \$360,000

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____)	
UNITED STATES OF AMERICA,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR CIVIL
)	PENALTIES, INJUNCTIVE
v.)	AND OTHER RELIEF
)	
WESTPOINT STEVENS INC.)	
a corporation,)	
)	
Defendant.)	
)	
_____)	

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

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(B), 9, 13(b), and 16(a) of the Federal Trade Commission Act as amended ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), 49, 53(b), and 56(a), to obtain monetary civil penalties, injunctive and other relief for defendant's violations of the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. §§ 70-70k, and

injunctive relief for violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and to 15 U.S.C. §§ 45(m)(1)(B), 49, 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

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

DEFENDANT

4. Defendant WestPoint Stevens Inc. is a Delaware Corporation with its principal place of business at 507 West Tenth Street, West Point, Georgia 31833. Defendant WestPoint Stevens Inc. is engaged in the importation, manufacture and sale of textile fiber products in many states. Defendant WestPoint Stevens Inc. transacts business in this district.

COMMERCE

5. At all times material to this complaint, the defendant has maintained a substantial course of trade, including the importation, introduction, advertising, offering for sale, and sale of textile fiber products, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

6. Section 3 of the Textile Act, 15 U.S.C. § 70a, specifies that 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 any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this Act or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

PRIOR COMMISSION PROCEEDINGS CONCERNING
MISBRANDING OF TEXTILE FIBER PRODUCTS

7. The Commission has determined that certain acts or practices in connection with the labeling and importing of textile fiber products are unfair or deceptive and are unlawful under the Textile Act, 15 U.S.C. §§ 70-70k, and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). These determinations were made in proceedings under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b). In these proceedings, the Commission issued final cease and desist orders in which the Commission determined that:

a. It is an unfair or deceptive act or practice to falsely or deceptively stamp, tag, label, invoice, advertise or otherwise identify any textile fiber product as to the name or amount of constituent fibers contained therein. H. Myerson Sons, et al., 78 F.T.C. 464 (1971); Taylor-Friedsam Co., Inc., et al.

Textile Fiber Products Identification Act.

Taylor-Friedsam Co., Inc., et al., supra.

8. WestPoint Stevens Inc. is the successor company resulting from a merger between J.P. Stevens & Co., Inc. and West Point-Pepperell, Inc. in 1988. Prior to the merger the Commission sent each of the merging parties, by certified mail, return receipt requested, a letter stating that the Commission, in the proceedings described in Paragraph 7 above, had determined that the acts and practices set forth in Paragraph 7 above, inter alia, are unfair or deceptive and unlawful under the Textile Act, 15 U.S.C. §§ 70-70k, and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). The letters also notified them of their liability for civil penalties under Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B), for knowingly engaging in acts or practices determined by the Commission to be unfair or deceptive and unlawful. Enclosed with each letter was a synopsis of the Commission's determinations under the Textile Act, 15 U.S.C. §§ 70-70k; a copy of Section 5(m) of the FTC Act, 15 U.S.C. § 45(m); a copy of the Textile Act, 15 U.S.C. §§ 70-70k; and copies of the Commission's Final Orders and Opinions in the proceedings described in Paragraph 7 above.

9. On or about February 2, 1977, J.P. Stevens & Co., Inc. received the letter and the enclosures described in Paragraph 8 above, and on or about February 7, 1977, West Point-Pepperell, Inc. received the letter and the enclosures described in Paragraph 8 above.

VIOLATIONS RELATING TO MISBRANDING
TEXTILE FIBER PRODUCTS

COUNT I

10. Beginning no later than January, 1993, in connection with the importing, introduction, manufacture for introduction, advertising, offering for sale or sale of "textile fiber products," as that term is defined in Section 2 of the Textile Act, 15 U.S.C. § 70, defendant misbranded numerous textile fiber products as to the amount of constituent fibers contained therein: e.g., labels and package inserts indicated that towels and sheets were made entirely of Pima cotton when in fact they were composed of six to fifty percent Pima cotton.

11. By engaging in the acts and practices set forth in Paragraph 10 above, defendant has violated the Textile Act, 15 U.S.C. §§ 70-70k, and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

COUNT II

12. Paragraphs one through nine are incorporated by reference.

13. On or about February 3, 1994, WestPoint Stevens Inc. filed a continuing guarantee with the Commission stating that the company guarantees that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and

were made entirely of Pima Cotton when in fact they were composed of six to fifty percent Pima cotton. Therefore, the guarantee was false. The furnishing of a false guarantee is a violation of the Textile Act, 15 U.S.C. §§ 70-70k, and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

CIVIL PENALTIES

15. At the time it engaged in the acts and practices set forth in Paragraphs 10 and 14 above, defendant had actual knowledge that such acts and practices were unfair or deceptive and unlawful pursuant to Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). Defendant, therefore, engaged in such acts or practices with actual knowledge as set forth in Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. § 45(m)(1)(B).

16. During the five years preceding the filing of this complaint, each misbranded textile fiber product that the defendant imported, manufactured for introduction in commerce, introduced, advertised, offered for sale, or sold, as set forth in Paragraph 10 above, and each false guarantee as set forth in Paragraph 14 above, constitutes a separate violation of the Textile Act for the purpose of computing civil penalties.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), 49 and 53(b) and the Court's own equity powers:

(1) Enter judgment against defendant and in favor of plaintiff for each violation of the Federal Trade Commission Act and of the Textile Act alleged in this complaint;

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

(3) Enjoin defendant from violating the Textile Act and the rules and regulations promulgated thereunder;

(4) Order defendant to pay the costs of this action; and

(5) Award plaintiff such additional relief as the Court may deem just and proper.

DATED: _____

FOR THE UNITED STATES OF AMERICA

FRANK W. HUNGER
Assistant Attorney General
Civil Division
U.S. Department of Justice

NORA MANELLA
United States Attorney

Central District of California

By: _____

Assistant U.S. Attorney

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