

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
950 Pennsylvania Avenue, N.W.
Washington, DC 20530,

Plaintiff,

NOW, THEREFORE, the Court having considered the parties' request to enter the Order, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(B), 53(b), and 56(a).
2. Venue in the District of Columbia is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b) and (c) and 1395(a).
3. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a)(1), 5(m)(1)(B), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(B), 53(b), and 56(a), and under the Textile Act, 15 U.S.C. § 70 *et seq.*, and the Textile Rules, 16 C.F.R. Part 303.
4. The alleged acts and practices of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Commission sent Defendants a letter dated January 27, 2010, informing Defendants that certain acts or practices in connection with the advertising of textile fiber products may violate the Textile Act and the Textile Rules and are unfair or deceptive under

an admission by Defendants or a finding of fact that the law has been violated as alleged in the Complaint.

8. The parties agree that this Order resolves all allegations in the Complaint. The parties waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claims that they may have against the United States, the Commission, and any employees, representatives, or agents of either that relate to the matter stated herein, including all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863–64 (1996), and any rights to attorneys' fees that may arise under said provision of law.
9. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the ey Tc (alaimsory, state)5(apery, flo(ppella)ie)5(4 partie)5(4)¶14.8TT1

trademark or other descriptive term or name for a product or product line, as bamboo, bamboo fiber, anti-microbial, anti-bacterial, or anti-fungal.

- B. “Defendants” mean “Sears, Roebuck, and Co.”; “Kmart Corporation”; and “Kmart.com, LLC”; and their respective subsidiaries, successors, and assigns.
- C. “Fiber trademark” shall mean a word or words used to identify a particular fiber sold by a person and to distinguish it from fibers of the same generic class sold by others, as defined in 16 C.F.R. § 303.1(r).
- D. “FTC” or “Commission” means the Federal Trade Commission.
- E. “Generic name of any manufactured fiber” shall mean any name for a textile fiber established and defined by the Commission pursuant to Section 70e(c) of the Textile Act, as set forth in 16 C.F.R. § 303.7.
- F. “Manufactured fiber” shall mean any fiber derived by a process of manufacture from any substance which, at any point in the manufacturing process, is not a fiber, as defined in 15 U.S.C. § 70(d).
- G. “Required information” shall mean such information as is required to be disclosed on labels or invoices and in advertising under the Textile Act, 15 U.S.C. § 70 et seq., and under the Textile Rules, 16 C.F.R. Part 303, as defined in 16 C.F.R. § 303.1(e).

I. PROHIBITION ON VIOLATING THE TEXTILE ACT AND TEXTILE RULES

IT IS HEREBY ORDERED that Defendants, directly or through any corporation, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product in or affecting commerce, shall not violate any provision of the Textile Act or Textile Rules, including but not limited to:

- A. Selling, offering for sale, or advertising in commerce any covered product that is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.
15 U.S.C. §§ 70a, 70b.
- B. Failing to use the recognized generic name of any manufactured fiber in the required information in any labels, invoices, or advertising of any covered product. 16 C.F.R. §§ 303.6 and 303.7.
- C. Failing to include all required information on labels for any covered product, including identifying:
1. the generic names and percentages by weight of the constituent fibers present in the covered product, in amounts of 5 percent or more and in the order of predominance, as set forth in 16 C.F.R. § 303.16(a)(1);
 2. the name or registered identification number issued by the Commission of the manufacturer or of one or more persons marketing or handling the covered product, 16 C.F.R. § 303.16(a)(2); and
 3. the name of the country where such covered product was processed or manufactured, as provided for in 16 C.F.R. § 303.33.
- 15 U.S.C. § 70b(b), 16 C.F.R. §§ 303.16 and 303.42(a).
- D. Failing to ensure that any fiber trademark or generic name used on the label of, or in any advertising for, any covered product:
1. is not false, deceptive, or misleading as to fiber content; and
 2. does not indicate, directly or indirectly, that the covered product is composed wholly or in part of a particular fiber, when such is not the case.

16 C.F.R. §§ 303.17(d) and 303.41(d).

E.

H. Failing to ensure that any words, coined words, symbols or depictions used in the labeling or advertising of a covered product which:

1. constitute or imply the name or designation of a fiber;
2. are phonetically similar to the name or designation of a fiber; or
3. are only a slight variation of spelling from the name or designation of a fiber

are not used in such a manner as to represent or imply that such fiber is present in the covered product, unless such fiber is actually present in that product.

16 C.F.R. § 303.18.

I. Failing to maintain for at least three (3) years required records for any covered products manufactured by Defendant, including records showing the fiber content. 15 U.S.C. § 70d(b); 16 C.F.R. § 303.39.

Provided, further, that nothing in this Order shall prohibit any Defendant from complying with the Textile Act and Textile Rules by establishing that it received and maintained in good faith a guaranty, which complies fully with Section 70h of the Textile Act, 15 U.S.C. § 70h, and with Sections 303.36–303.38 of the Textile Rules, 16 C.F.R. §§ 303.36–303.38, that such covered product is not misbranded or falsely invoiced. A guaranty shall not be received or maintained in good faith after the Defendant knows or should have known that products covered by the guaranty are or likely may be mislabeled

all provisions 303

embellish or misrepresent claims provided by the manufacturer about a covered product, and (2)

standard financial disclosure forms fully and accurately within ten (10) business

and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendants' possession or direct or indirect control to inspect the business operation;

B. In addition, the United States and the Commission are authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69; and
2. having their representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the United States and the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall

IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, each Defendant shall notify the Commission of any changes in structure of the respective Defendant or any business entity that Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setthe d-0.0003 Tw 15.86-0003 d Td [shalle b is trut n ow

- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
RE:

- B. Personnel records for each person employed by Defendant as a manager having responsibilities for Defendant's marketing or sale of textile products accurately reflecting that person's: name, address, and telephone number; job title or position; date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the or business; and
- D. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

VI. DISTRIBUTION OF ORDER

five (5) years from the date

delivery shall be at least ten (10) days prior to the change in structure. Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defendant within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.


SO ORDERED this ____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE
United States District Court

STIPULATED AND AGREED TO:

FOR THE COMMISSION:

JAMES A. KOHM,
Associate Director for Enforcement
ROBERT S. KAYE,
Assistant Director for Enforcement



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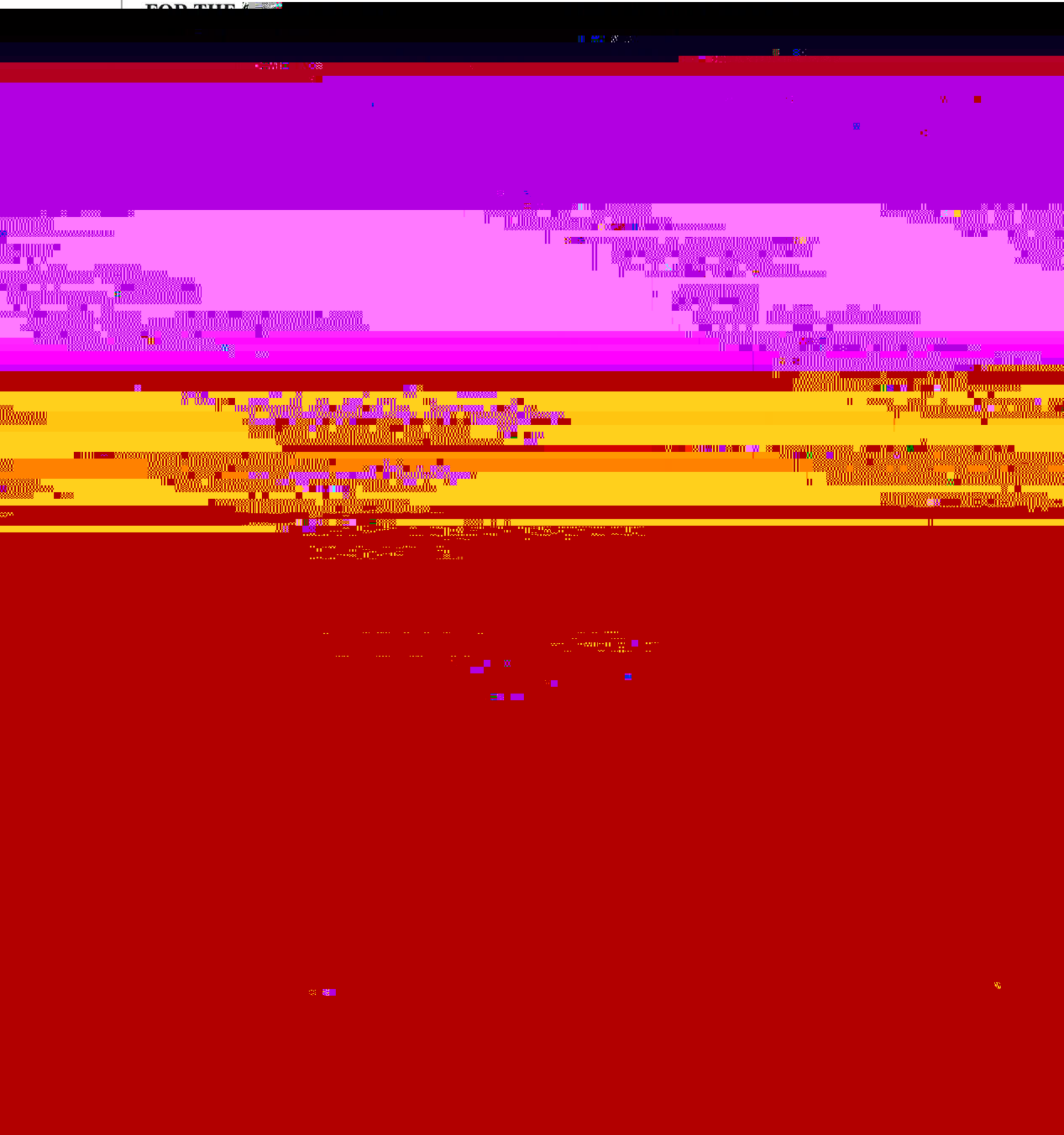
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FOR THE



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FOR THE COMMISSION

FOR THE DEFENDANTS

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