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FEDERAL TRADE COMMISSION

16 CFR Part 303

RIN 3084-AB28

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes amending the Textile Rules (“Rules and Regulations under the Textile Fiber Products Identification Act”) to delete the requirement that an owner of a registered word trademark furnish the FTC with a copy of the mark’s registration with the United States Patent and Trademark Office (“USPTO”) before using the mark on labels, and to no longer restrict the use of such trademarks to only those also employed as house marks. Eliminating these requirements is expected to reduce compliance costs while increasing firms’ flexibility.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “Textile Rules, 16 CFR Part 303, Project No. P948404” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/textilerulesnprm> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue N.W., Suite CC-5610 (Annex C), Washington, DC 20580, or

deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street S.W., 5th Floor, Suite 5610 (Annex C), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, (202) 326–2098, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission recently announced a new initiative to eliminate or change outdated, unnecessary regulations and processes.¹ While the textile regulation at issue here does not impose large costs on business, the cumulative burden of unnecessary regulations can impose significant costs and undermine the efficiency with which government delivers services to the public. With these concerns in mind, the Commission now proposes eliminating the requirement in 16 CFR 303.19(a) that businesses furnish the Commission with registered word trademarks prior to using these marks to satisfy the Textile Rules. Eliminating this requirement is expected to reduce compliance costs while increasing firms’ flexibility.

Specifically, the Textile Fiber Products Identification Act (“Textile Act”)² and implementing rules (“Textile Rules”) require marketers to, among other things, attach a label to each covered textile product disclosing: (1) the generic names and percentages

¹ <https://www.ftc.gov/news-events/press-releases/2017/04/process-reform-initiatives-are-already-underway-federal-trade>.

² 15 U.S.C. 70 *et seq.*

by weight of the constituent fibers in the product; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the company's registered identification number ("RN number"); and (3) the name of the country where the product was processed or manufactured.³ Section 303.19 allows the owners of registered word trademarks who use these trademarks as house marks to disclose such trademarks on labels in lieu of their business names. However, before doing so, the company must file a copy of the trademark's USPTO registration with the Commission. This requirement was imposed in 1959 presumably to obviate the need for the Commission to obtain from the USPTO paper copies of trademark registrations. However, the registered marks can be found by searching online or at the USPTO's Website (www.uspto.gov). The Commission, therefore, proposes to eliminate the requirement for businesses to file paper copies of the registration with the Commission because it appears unnecessary and could in some cases impose unnecessary costs on businesses.

II. Proposed Amendment

The Commission promulgated § 303.19 in 1959 at the time it issued the Textile Rules, and the provision has not changed since.⁴ When the Commission issued the Rules, neither the Commission nor consumers could identify easily the owners of word trademarks. Thus, at the time, the regulation provided some benefit (*i.e.*, facilitating the identification of trademark owners to address compliance issues or help consumers contact textile product marketers).

³ See 15 U.S.C. 70b(b).

⁴ See 24 FR 4480, 4484 (June 2, 1959).

Now, Commission staff and consumers can identify trademark owners by searching online or on the USPTO's online database. Accordingly, the regulation is no longer necessary. The Commission, therefore, proposes to amend § 303.19(a) to delete this requirement. In addition to potentially reducing compliance costs for textile marketers, deleting this requirement would eliminate the Commission's need to process and maintain trademark registration records, freeing those resources for more productive uses.⁵

Additionally, there appears to be no reason to restrict the use of word trademarks to only those also employed as house marks.⁶ In the past, it was difficult for consumers to research registered marks, and, therefore, it made sense to require companies to use marks that consumers could easily identify with a particular company. Consumers now can identify trademark owners online or look up the trademark registrations online at the USPTO, and, therefore, the rationale for limiting the use of marks no longer seems to be necessary. In addition, removing this requirement would give companies the flexibility to use any registered word mark.

III. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 31, 2017. Write "Textile Rules, 16 CFR part 303, Project No. P948404" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the

⁵ If the Commission adopts this amendment, it plans to destroy its word trademark registration records, except to the extent that retaining such records is necessary to comply with federal statutes, regulations, or other legal authority.

⁶ A house mark is a mark used on a wide range of goods sold by a company.

extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/textilerulesnprm>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Website.

If you file your comment on paper, write “Textile Rules, 16 CFR Part 303, Project No. P948404” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue N.W., Suite CC-5610 (Annex C), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street S.W., 5th Floor, Suite 5610 (Annex C), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your

comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission Website to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July

31, 2017. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

The Commission invites members of the public to comment on the costs and benefits to industry members and consumers, as well as any issues or concerns they believe are relevant or appropriate to the Commission’s consideration of the proposed amendment to the Textile Rules. The Commission requests that comments provide factual data upon which they are based.

IV. Communications to Commissioners and Commissioner Advisors by Outside Parties

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner’s advisor will be placed on the public record.⁷

V. Regulatory Flexibility Act Requirements

The Regulatory Flexibility Act (“RFA”)⁸ requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA⁹ provides that such an analysis is not required if the agency head certifies that

⁷ See 16 CFR 1.26(b)(5).

⁸ 5 U.S.C. 601–612.

⁹ 5 U.S.C. 605.

the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendment would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. In the Commission's view, the proposed amendment should not increase the costs of small entities that manufacture or import textile fiber products. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the proposed amendment would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons that Action by the Agency Is Being Taken

The Commission proposes amending the Rules to delete one requirement and provide greater flexibility in complying with the Rules' disclosure requirements.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendment

The Textile Act authorizes the Commission to implement its requirements through the issuance of rules. The proposed amendment would delete the requirement that word trademark owners disclosing their trademarks in lieu of their business names on labels furnish a copy of their trademark registrations to the Commission, and provide covered entities with additional labeling options (*i.e.*, to use word trademarks in lieu of

business name, even if such trademarks are not house marks) without imposing new burdens or additional costs.

C. Small Entities to Which the Proposed Amendments Will Apply

The Rules apply to various segments of the textile fiber product industry, including manufacturers and wholesalers of textile apparel products. Under the Small Business Size Standards issued by the Small Business Administration, textile apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing wholesalers qualify as small businesses if they have 100 or fewer employees. The Commission's staff has estimated that approximately 22,642 textile fiber product manufacturers and importers are covered by the Rules' disclosure requirements.¹⁰ A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendment will not have a significant impact on small businesses because they do not impose any new obligations on them.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

As explained earlier in this document, the proposed amendment would delete a filing requirement and a limitation on the use of word trademarks on textile labels, thus providing greater flexibility to companies covered by the Rules. The small entities potentially covered by the proposed amendment will include all such entities subject to the Rules.

E. Duplicative, Overlapping, or Conflicting Federal Rules

¹⁰ 80 FR 1411, 1413 (Jan. 9, 2015).

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendment.

F. Significant Alternatives to the Proposed Amendment

The Commission has not proposed any specific small entity exemption or other significant alternatives because the proposed amendment would not impose any new requirements or compliance costs.

VI. Paperwork Reduction Act

The Rules contain various “collection of information” (*e.g.*, disclosure and recordkeeping) requirements for which the Commission has obtained clearance from the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”).¹¹ The proposed amendment does not impose any additional collection of information requirements.

List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

Accordingly, the FTC proposes to amend 16 CFR part 303 as follows:

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

1. The authority citation for part 303 continues to read as follows:

Authority: 15 U.S.C. 70 *et seq.*

2. Amend § 303.19 by revising paragraph (a) to read as follows:

¹¹ 44 U.S.C. 3501 *et seq.* The Commission published its PRA burden estimates for the current information collection requirements under the Rules. *See* 80 FR at 1411, 1413 (Jan. 9, 2015) and 80 FR 14387, 14388 (Mar. 19, 2015). In April 2015, OMB granted clearance through April 30, 2018, for these requirements and the associated PRA burden estimates. The OMB control number is 3084–0101.

§ 303.19 Name or other identification required to appear on labels.

(a) The name required by the Act to be used on labels shall be the name under which the person is doing business. Where a person has a word trademark, registered in the United States Patent and Trademark Office, such word trademark may be used on labels in lieu of the name otherwise required. No trademark, trade names, or other names except those provided for above shall be used for required identification purposes.

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By direction of the Commission.

Donald S. Clark,
Secretary.

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