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FEDERAL TRADE COMMISSION

16 CFR Part 303

RIN 3084-AB47

Rules and Regulations Under the Textile Fiber Products Identification Act

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

ACTION: Final rule.

SUMMARY: The Commission amends the Rules and Regulations Under the Textile Fiber Products Identification Act (“Textile Rules”) to delete the requirement that an owner of a registered word trademark, used as a house mark, 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.

DATES: Effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326-2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Textile Fiber Products Identification Act (“Textile Act”)¹ and implementing Textile Rules require marketers to, among other things, attach a label to each covered textile fiber

product disclosing: (1) the generic names and percentages by weight of the constituent fibers in the product; (2) the name under which the manufacturer or other responsible company does business, *i.e.*, the product's marketer's name,² or other specified identifier in lieu of that name,³ and (3) the name of the country where the product was processed or manufactured.⁴ Section 303.19(a) allows the owners of registered word trademarks who use these trademarks as house marks to disclose such trademarks in lieu of their names. However, before doing so, the company must file a copy of their USPTO registration with the Commission. The Commission imposed this requirement in 1959, presumably to obviate the need for the Commission to obtain paper copies of registrations from the USPTO. However, registered house marks now can be found by searching online or at the USPTO's Website (www.uspto.gov).

II. Amendments to the Textile Rules

In a Notice of Proposed Rulemaking published on June 28, 2017,⁵ the Commission proposed amending Section 303.19 to: (1) delete the requirement that an owner of a registered word trademark used as a house mark furnish the FTC with a copy of the mark's registration with the USPTO before using the mark on labels, and (2) no longer restrict the use of such trademarks to only those employed as house marks. The Commission received three comments in response.⁶

As discussed below, based on the record, the Commission has determined to amend the

¹ 15 U.S.C. 70 *et seq.*

² 15 U.S.C. 70b(b)(3).

³ 16 CFR § 303.19.

⁴ *See* 15 U.S.C. 70b(b).

⁵ 82 FR 29251 (June 28, 2017)

⁶ American Apparel & Footwear Association (AAFA) (#00005); Jonathan Appelbaum (#00003); and De La Cruz (#00002). *See* <https://www.ftc.gov/policy/public-comments/2017/07/initiative-708>.

Textile Rules to delete the requirement trademark owners furnish the FTC with a copy of the mark's USPTO registration before using the mark on labels. Based on the comments received, however, the Commission declines to eliminate the provision allowing only trademarks used as house marks.

A. Deleting the Registration Submission Requirement

Comments: The AAFA and Appelbaum comments supported the Commission's proposal to eliminate the requirement that businesses provide the Commission with a copy of a word trademark's USPTO registration prior to using these marks. AAFA asserted that simplifying the Textile Rules would "eliminate confusion, both for the business community and for consumers."⁷ De La Cruz, however, opposed this proposed amendment, arguing that the current Section 303.19(a) "keeps trade in order" and "discourages trademark infringement,"⁸ but did not offer support for these contentions.

Discussion: Based on the record, the Commission amends Section 303.19(a) of the Textile Rules 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 USPTO prior to using the mark in lieu of a marketer's name. Commenters and the Commission's experience indicate that eliminating the submission requirement will reduce compliance costs for marketers without reducing protections for consumers. Specifically, the Commission and consumers can readily identify a registrant by searching for a marketer's house mark on the USPTO's online database or other online

⁷ AAFA, https://www.ftc.gov/system/files/documents/public_comments/2017/07/00005-141123.pdf, p. 1; Appelbaum, https://www.ftc.gov/system/files/documents/public_comments/2017/07/00003-141029.pdf, p. 1.

⁸ De La Cruz, <https://www.ftc.gov/policy/public-comments/2017/07/06/comment-00002>, p. 1.

resources.⁹ Moreover, Commission staff has not consulted the files of house marks submitted to the Commission for many years, if ever, nor has it received requests from the public to do so. The Commission therefore concludes that the current submission requirement is neither necessary nor useful to enable the Commission or consumers to identify marketers of textile fiber products.

B. Word Trademarks Other Than House Marks as Marketer Identifiers

Comments: Commenters Appelbaum and De La Cruz opposed the Commission's proposal to eliminate the provision allowing only trademarks used as house marks to be used in lieu of marketers' names. Appelbaum asserted that the proposed amendment was premised on an assumption a word trademark is "unique," when, in fact, word trademarks may be "very similar," preventing consumers from effectively searching online for business owners.¹⁰ Appelbaum further noted that, in contrast, house marks did not present this problem because "a house mark is more uniquely associated with a business and less likely to be imitated."¹¹ De La Cruz stated without further analysis that the current Section 303.19(a) "keeps trade in order" and "discourages trademark infringement."¹² The AAFA supported this proposed amendment without explanation.¹³

Discussion: The Commission declines to amend Section 303.19(a) of the Textile Rules to permit the use of word trademarks other than house marks in lieu of marketers' names. The

⁹ As discussed below, however, although simple searches can determine registrants for house marks, it is far more difficult to determine relevant registrations for some word trademarks.

¹⁰ Appelbaum, p. 1.

¹¹ *Id.*

¹² De La Cruz, p. 1.

comments and staff research indicate that such an amendment would impose new burdens and additional costs on consumers and others to identify marketers of textile fiber products.

In particular, the record indicates that it can be difficult to find the identity of a specific registrant using a word trademark, rather than a house mark. Word trademarks that are not house marks can be registered for specific goods or services, and identical word trademarks can be registered numerous times for different goods or services.¹⁴ Consequently, simple searches on the USPTO's online database can produce hundreds or thousands of responses.¹⁵ Although sophisticated searches produce far fewer responses, such searches may require more training and expertise than many consumers are likely to possess.¹⁶ In contrast, to register a house mark as a trademark, the USPTO requires that an applicant indicate that it will use that house mark "for a full line of products" so that consumers can identify a manufacturer or seller from that house mark.¹⁷ Therefore, it is significantly easier to identify a house mark owner from a USPTO search.¹⁸

¹³ AAFA, p. 1.

¹⁴ For example, the USPTO has 148 registrations for the trademark "Acme" for different types of goods, including boat propellers (AMG Operations), beer (North Coast Brewing Co., Inc.), and firearm targets (Clifford J. Brown). Three of these registrations are for products covered by the Textile Rules: T-shirts (Acme Anvils, LLC), T-shirts (Time Warner Entertainment Company, L.P.), and quilts (Pillowtex Corp.).

¹⁵ For instance, a simple search for "Acme" on the USPTO's website currently produces 527 registrations; a simple search for "Cotton" produces 2,761 registrations. Similarly, searches on standard search engines for common word trademarks can produce enormous numbers of responses. Searching for "Acme" on Google returns almost 57 million results, with the first results referencing supermarkets, cartoons, packaging-supplies, pies, and furniture.

¹⁶ For example, to search on the USPTO website for only "Acme," and exclude the 379 registrations for terms that include Acme, such as "Pro Acme," a user must conduct a "structured" search on the USPTO database and specify that the search is on the "FULL MARK" field.

¹⁷ USPTO "Trademark Manual of Examining Procedure April 2017" 1402.03(b) House Marks, available at <https://tmap.uspto.gov/RDMS/TMEP/current#/current/TMEP-1400d1e2208.html>.

¹⁸ For example, a simple search on the USPTO for the house mark "Kirkland Signature" returns 138 registrations, all owned by Costco Wholesale Corporation. Therefore, consumers can review any of the registrations and determine the house mark owner, even though only one of the registrations is for clothing. Online searches for "Kirkland Signature" also readily return references to Costco Wholesale Corporation.

RN numbers also already provide a free, convenient alternative to names for marketers that do not own house marks.

Accordingly, the Commission will continue to allow only owners of registered word trademarks who use these trademarks as house marks to disclose such trademarks in lieu of their names.

III. Paperwork Reduction Act

The Textile 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”).¹⁹ The amended Textile Rules do not impose any additional collection of information requirements.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.²⁰

The Commission anticipates that the final amendment will not have a significant economic impact on a substantial number of small entities. In the Commission’s view, the amendment should not increase the costs of small entities that manufacture or import textile fiber products, but may reduce costs associated with furnishing a copy of a registered word

The Commission has recently revised the RN Database at <https://rn.ftc.gov/Account/BasicSearch>, so consumers can easily identify companies from RN numbers.

¹⁹ 44 U.S.C. 3501 *et seq.* In 2015, the Commission published its PRA burden estimates for the current information collection requirements under the Rules. *See* 80 FR 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.

²⁰ 5 U.S.C. 603-605.

trademark used as a house mark to the FTC. Therefore, based on available information, the Commission certifies that amending the Textile Rules will not have a significant economic impact on a substantial number of small businesses. Although the Commission certifies under the RFA that the amendment will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish a Final Regulatory Flexibility Analysis to inquire into the impact of the proposed amendment on small entities. Therefore, the Commission has prepared the following analysis:

Although the Commission has certified under the RFA that the amendments would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

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

The Commission is amending the Rules to provide greater flexibility in complying with the Rules' disclosure requirements by permitting textile fiber product marketers to use registered house marks to identify themselves without sending registration copies to the Commission.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendment on small businesses. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

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 business 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 Textile Rules' disclosure requirements.²¹ A substantial number of these entities likely qualify as small businesses. The Commission estimates that the amendment will not have a significant impact on small businesses because it does not impose any new obligations on them, but may reduce filing costs associated with the Textile Rules.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendment deletes a filing requirement, thus providing greater flexibility to companies covered by the Textile Rules. The amendment is not expected to increase any reporting, recordkeeping, or other requirements associated with the Textile Rules, and is expected to decrease reporting requirements.

E. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendment is expected to decrease reporting requirements and will not impose any new requirements or compliance costs. No comments identified any new compliance costs, and several comments argued the amendment will reduce compliance costs.

²¹ 80 FR 1411, 1413 (Jan. 9, 2015).

List of Subjects in 16 CFR part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

For the reasons discussed in the preamble, the Commission amends part 303 of title 16, Code of Federal Regulations, as follows:

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

1. The authority citation for Part 303 continues to read:

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

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

§ 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, used as a house mark, registered in the United States Patent 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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