

**FEDERAL TRADE COMMISSION  
16 CFR Part 303**

**Rules and Regulations  
Under the Textile Fiber Products Identification Act**

**AGENCY:** Federal Trade Commission.

**ACTION:** Reopening of comment period.

**SUMMARY:** The Federal Trade Commission (“Commission” or “FTC”), pursuant to a Petition filed by Mohawk Industries, Inc. (“Mohawk”), E. I. du Pont de Nemours and Company (“DuPont”), and PTT Poly Canada (“PTT Canada”) (hereinafter “Petitioners”), solicited comments on whether the Commission should: (1) amend Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act (“Textile Rules”) to establish a new generic fiber subclass name and definition within the existing definition of “polyester” for a specifically proposed subclass of polyester fibers made from poly(trimethylene terephthalate) (“PTT”); (2) amend Rule 7(c) to broaden or clarify its definition of “polyester” to describe more accurately the PTT fiber; or (3) retain Rule 7(c)’s definition of “polyester.” The Commission received comments through November 12, 2007. Based on those comments, the Commission is reopening the comment period for an additional 30 days.

**DATE:** Comments will be accepted until May 5, 2008.

**ADDRESSES:** Comments should refer to “16 CFR Part 303 – Textile Rule 8, Mohawk, DuPont, and PTT Canada Comment, Matter No. P074201” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade

Commission/Office of the Secretary, Room H-135 (Annex K), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Because paper mail in the Washington area and at the FTC is subject to delay, please consider submitting your comment in electronic form, as prescribed below. Comments containing any material for which confidential treatment is requested, however, must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form (except comments containing any confidential material) should be submitted to the FTC by clicking on the following Web link: <https://secure.commentworks.com/ftc-MohawkDuPontandPTTCanadaComment> and following the instructions on the Web-based form. You may also visit <http://www.regulations.gov> to read this request for public comment, and may file an electronic comment through that Web site. The FTC will consider all comments that [www.regulations.gov](http://www.regulations.gov) forwards to it.

\_\_\_\_\_The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be available to the public on the FTC

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<sup>1</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Janice Podoll Frankle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C., 20580; (202) 326-3022.

**SUPPLEMENTARY INFORMATION:**

In a Federal Register Notice,<sup>2</sup> the Commission solicited comments on whether to amend Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act (“Textile Rules”) to establish a new generic fiber subclass name and definition within the existing definition of “polyester.” Specifically, the Commission asked whether it should establish a new subclass of polyester fibers made from PTT. At the close of the comment period on November 12, 2007, the Commission had received 49 comments.<sup>3</sup> With the exception of one comment, from INVISTA S.à r.l. (“INVISTA”),<sup>4</sup> all of the commenters stated that they favored amending the Textile Rules to add a generic fiber subclass designation for PTT.

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<sup>2</sup> 72 Fed. Reg. 48,600 (Aug. 24, 2007).

<sup>3</sup> The 49 comments can be found at: <http://www.ftc.gov/os/comments/textile-mohawk/index.shtm>

<sup>4</sup> INVISTA’s comment can be found at: <http://www.ftc.gov/os/comments/textile-mohawk/532047-00053.pdf>

The Commission received INVISTA's comment opposing the Petition three days prior to the close of the 75 day comment period. Thus, the public had only limited opportunity to review and respond to it.<sup>5</sup> INVISTA's comment, which includes additional testing comparing PTT with conventional polyester ("PET"), calls into question the merits of the Petition, and raises issues worthy of additional time for public review and comment.

INVISTA's comment states that Petitioners failed to meet the Commission's standard for establishing a new generic fiber subclass for PTT. Under the Commission's standard, a new generic fiber subclass is appropriate if it: (1) has the same general chemical composition as an established generic fiber category, and (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure.<sup>6</sup> INVISTA argues that Petitioners failed to satisfy the second prong of this standard for two reasons.

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<sup>5</sup> Prior to the comment period closing, the Commission did not receive any comments responding to INVISTA's comment.

<sup>6</sup> The Commission articulated a standard for establishing a new generic fiber subclass in the "lyocell" proceeding (16 CFR 303.7(d)). There, the Commission noted that:

Where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited. 60 FR 62352, 62353 (Dec. 6, 1995).

First, INVISTA asserts that because PTT performed differently than PET on such a small percentage of performance characteristics important to consumers (two out of 10),<sup>7</sup> PTT is not sufficiently distinctive. Thus, INVISTA argues, the Petition is “fatally flawed” and the Commission cannot conclude that PTT fibers are “significantly better suited” than PET fibers in carpet applications.

Second, even if superiority as to only two of the top 10 carpet applications could satisfy the standard, INVISTA argues that the Petition does not substantiate the assertion that PTT is superior to PET. With regard to carpet durability, INVISTA states that Petitioner’s test was inadequate because: (1) Petitioners used the Hexapod Wear Test, a relatively light-duty test of the performance of PET and PTT, and did not use the Vettermann Drum test, which INVISTA alleges better simulates how carpet holds up under actual use; (2) INVISTA’s own testing using the Vettermann Drum test showed no meaningful difference between PET and PTT;<sup>8</sup> and (3)

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<sup>7</sup> As set forth in Table 1 of the Petition, consumer survey evidence indicates these carpet performance characteristics are: common spills and pet accidents can be easily removed; carpet is durable; dirt and soil can be easily removed; areas where spills have been cleaned will not be visible; stain resistant properties will not diminish over time; soil resistant properties will not diminish over time; carpet color will stay the same and will not fade; heavy soil and most stains can be removed from the carpet with water; carpet pile will not shed or fuzz; and carpet is soft.

<sup>8</sup> INVISTA submitted additional durability and appearance testing comparing PTT and PET carpets which it argued showed that “PTT performed very much like PET.” Only one other commenter, Independent Textile Testing Service, Inc. (“Independent”), stated that it had tested PTT. Independent stated that over the past 10 years it had been involved in extensive testing of the PTT fiber pertaining to carpet usage and that its testing included pedestrian traffic, soiling, staining, static, and colorfastness. Independent said that PTT performed much better than PET in foot traffic ratings and concluded that it would benefit the consumer to know that there were distinct differences between PET and PTT. Independent’s comment can be found at: <http://www.ftc.gov/os/comments/textile-mohawk/532047-00047.htm>.

Petitioners compared finer, lighter weight PET fibers with thicker, heavier weight PTT fibers, thus making a meaningful comparison impossible.

INVISTA also argues that the Petition does not substantiate the assertion that PTT is superior with respect to softness. INVISTA states that rather than submitting any test results or survey data indicating how soft PTT fibers feel to consumers in actual carpet application, Petitioners presented “irrelevant” laboratory testing regarding deflection properties.<sup>9</sup> INVISTA argues that Petitioners failed to show that such testing reveals differences meaningful to consumers evaluating the softness of carpets. INVISTA relies on a similar analysis to argue that the Petitioners failed to demonstrate that PTT fabrics are softer than PET fabrics.<sup>10</sup>

Furthermore, INVISTA contends that the Petition does not substantiate the assertion that PTT is superior with respect to stretch with recovery of apparel products. INVISTA argues that Petitioners failed to present the results of any reliable testing methodology showing that PTT fibers “recover” from stretching better than PET fibers. INVISTA states that Petitioners’ testing for stretch and recovery was flawed, in part, because Petitioners failed to demonstrate that the amount of tension used in the test simulates the tension applied in actual consumer use of garments.

INVISTA’s comment discusses another reason why it believes the Commission should deny the Petition. Specifically, INVISTA states that two of Petitioners’ three suggested new

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<sup>9</sup> The Petition states that a very useful measure of the difference in yarn softness is the force or stress required to deflect or strain a fiber a given distance.

<sup>10</sup> Concerning both carpet and apparel applications, INVISTA also argues that the Petition failed to address how different manufacturing techniques affect softness. INVISTA states that the Petition failed to address the possibility that the same level of softness provided by PTT could be achieved using PET fibers and different manufacturing techniques.

generic subclass names for PTT “appear to be intentionally designed to create confusion with existing INVISTA trademarks.”<sup>11</sup>

INVISTA raises arguments that merit further discussion.<sup>12</sup> Because Petitioners and other interested parties had limited opportunity to review and comment on INVISTA’s comment prior to the close of the public comment period, a full discussion of the issues has been impossible. Therefore, the Commission has decided to reopen the comment period for 30 days. The Commission believes that the benefit of enhancing the record by reopening the comment period outweighs any delay stemming from reopening the comment period.

**List of Subjects in 16 CFR Part 303**

Labeling, Textile, Trade Practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

Donald S. Clark  
Secretary

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<sup>11</sup> INVISTA argues that Petitioners’ proposed names “resisoft” and “durares” are “alarmingly similar” to INVISTA’s ResisTech® and DuraTech® brand names, respectively.

<sup>12</sup> In addition to these arguments, INVISTA dismisses as irrelevant Petitioners’ argument that it might be difficult to recycle PTT and PET together due to their different properties and that the subclass designation would help recyclers separate PTT from PET fibers to avoid any such difficulty.