

Complaint.

8 F. T. C.

IN THE MATTER OF

JOSEPH GILBERT AND JACOB GILBERT, PARTNERS
DOING BUSINESS UNDER THE FIRM NAME AND
STYLE OF AMERICAN FEATHER BED & PILLOW
COMPANY.COMPLAINT, FINDINGS AND ORDER IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.*Docket 1129—December 6, 1924.*

SYLLABUS.

Where a firm engaged in the sale by mail of feather beds, pillows and allied articles, of which it manufactured a part, but purchased a large portion from other manufacturers and resold the same at prevailing prices demanded by dealers engaged in the sale of such commodities by mail; in advertising its products in magazines, newspapers and other publications, and in catalogues, circulars, price lists and other trade literature,

- (a) Stated that it manufactured the articles which it dealt in, and sold the same direct to the consumer at factory prices, thus eliminating the profits of all middlemen;
- (b) Described its products as being of differing grades and qualities and listed the same under different trade names applied thereto and at varying prices to correspond to the purported differences in qualities and makes, the fact being that the bedding so described did not differ in grade, make, or quality;

With the effect of misleading and deceiving the public, and of securing from purchasers of the purported higher grades prices substantially in excess of the fair and reasonable value of the articles concerned, and substantially in excess of the prices at which it offered and sold the same articles as the lowest purported grade:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Charles Gilbert of Nashville, Tenn., for respondents.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Joseph Gilbert and Jacob Gilbert, partners, doing business under the trade name and style American Feather Bed & Pillow Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in

Complaint.

violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style American Feather Bed & Pillow Company with their place of business in the city of Nashville, State of Tennessee. They are engaged in the manufacture and sale of feather beds and pillows and are further engaged in purchasing feather beds, pillows and allied products from the manufacturers thereof and of thereafter reselling said commodities direct to consumers located at points in the various States of the United States. They cause said commodities when so resold to be transported from their aforesaid place of business in the city of Nashville, Tenn., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their aforesaid business respondents are in competition with other individuals, partnerships and corporations similarly engaged in the sale of feather beds, pillows and allied products in interstate commerce and with the trade generally.

PAR. 2. The charges of this complaint relate only to respondents' aforesaid business of purchasing products manufactured by others and of thereafter reselling the same as above set out.

PAR. 3. Respondents conduct their aforesaid business as follows: They cause advertisements to be published in newspapers, magazines and other publications in general circulation in the United States or in sundry localities thereof, and issue catalogs, circulars, price lists and other trade literature which they send to customers and prospective customers amongst the general public in various States of the United States, in which advertisements, catalogs and other trade literature respondents depict and describe the commodities which they have for sale together with the prices at which the same are offered, and solicit orders by mail therefor, which orders respondents undertake to fill by shipping the commodities so ordered direct to the purchasers thereof. In aforesaid advertisements, catalogs and other trade literature respondents make numerous false and misleading representations and assertions regarding their method of doing business and the nature and quality of the goods so offered and sold by them, among which representations and assertions are the following:

- (a) That respondents manufacture aforesaid articles in which they deal and sell the same direct to the consumer at factory prices thus eliminating the profits of all middlemen.

The fact is that respondents neither own, operate nor are interested in any plant or factory whatsoever for the manufacture of the com-

Complaint.

8 F. T. C.

modities in which they deal, but buy said commodities from the manufacturer thereof and resell same at a profit.

Aforesaid false and misleading assertions and representations have the capacity and tendency to and do mislead and deceive the public into the erroneous belief that respondents own or operate a factory for the manufacture of aforesaid products in which they deal and that persons buying from respondents are buying direct from the manufacturer of said commodities thereby saving the profits of all intermediate dealers and tend to and do cause such purchasers to purchase said commodities from respondents in said belief, when as a matter of fact said vendees are not saving the profits of intermediate dealers but are paying prevailing prices demanded by dealers generally in the ordinary course of trade for articles of like kind and quality.

(b) That sundry classes or kinds of aforesaid commodities offered for sale by respondents are of different grades and quality.

The fact is that the commodities thus represented to be of different grades are all of the same grade and quality. In connection with said false representations respondents have adopted a different trade name for each said purported grade of the commodities in this specification referred to, and offer said commodities in said catalogs and other trade literature under said respective trade names and at substantially differing prices. Upon receiving orders for commodities of said purported grades respondents cause labels to be attached to said commodities upon which labels appear the aforesaid trade names respectively of the purported grades of the articles so sold.

By means of aforesaid representations and the things done by respondents pursuant thereto as above set out, respondents deceive the public into the belief that said purported higher grades of said articles are of better quality and worth more than the lowest and actual grade and quality thereof, and respondents thus secure from purchasers of said purported higher grades prices substantially in excess of the fair and reasonable value of the articles so sold and substantially in excess of the prices at which the respondents offer and sell the same articles as the lowest purported grade thereof.

PAR. 4. The above alleged acts and things done by respondents, and by each of them, are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the first day of March, 1924, issued and served its complaint upon the respondents, Joseph Gilbert and Jacob Gilbert, partners doing business under the firm name and style of American Feather Bed and Pillow Company, charging them with unfair competition in violation of section 5 of said Act. The respondents having entered their appearance and an agreed statement as to the facts having been made and filed, in which it is stipulated that the facts therein recited may be taken in lieu of the testimony of this proceeding, and that upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusions, and enter its order disposing of the proceeding.

Thereupon, this proceeding came on for final hearing without oral argument, and the Commission having duly considered the record and having now been fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are now and for several years last past have been partners, doing business under the firm name and style of American Feather Bed & Pillow Co., with their principal place of business in the city of Nashville, Tenn., and engaged in the selling of feather beds and pillows and allied articles direct to the users thereof located at various points in the various States of the United States. They cause said commodities, when so sold, to be transported from their aforesaid place of business in the city of Nashville, Tenn., into and through other States of the United States to said purchasers at their respective locations. In the course and conduct of their said business respondents are in competition with various other individuals, partnerships and corporations located in the United States who are also engaged in the sale of feather beds and pillows and allied articles in interstate commerce and with the trade generally. The respondents are also engaged and have been engaged in the manufacture of feather beds and pillows and allied articles. A portion of the articles sold by them, as mentioned in this paragraph, are products of their own manufacture; but a large portion of the articles so sold are purchased by them from other manufacturers.

Findings.

8 F. T. C.

PAR. 2. In the course and conduct of their said business respondents caused advertisements to be published in magazines, newspapers and other publications of general circulation in the United States, and issued catalogues, circulars, price lists and other trade literature, which they send to customers and prospective customers among the general public in the various States of the United States, in which advertisements, catalogues and other trade literature respondents depict and describe the commodities they have for sale, together with the prices at which same are offered, and solicit orders by mail therefor, which orders respondents undertake to fill by shipping the commodities so ordered to the purchasers thereof. In the aforesaid advertisements, catalogues and other trade literature respondents make a false and misleading representation as follows:

That respondents manufacture the articles in which they deal and sell the same direct to the consumer at factory prices, thus eliminating the profits of all middlemen.

Such representation is made as to all of the articles sold or offered for sale by respondents, regardless of the fact as to whether or not the articles are, in fact, manufactured by respondents or purchased by them from other factories. The aforesaid false and misleading representations have the tendency and capacity to, and do, mislead and deceive the public into the erroneous belief that respondents manufacture all of the aforesaid products in which they deal, and that persons buying from respondents are buying direct from the manufacturer of said commodities, thereby saving the profits of all intermediate dealers; when, as a matter of fact, such purchasers are paying for all products not manufactured by respondents the prevailing prices demanded by dealers engaged in selling such commodities by mail in the ordinary course of trade.

PAR. 3. In the advertisements, catalogues and other trade literature mentioned in paragraph 2 hereof, respondents make a further false and misleading representation as follows:

That sundry classes or kinds of the aforesaid commodities offered for sale by respondents are of different grades and qualities.

In such representations respondents advertise certain of their products under the following names:

Princess	Progress
Washington	Puritan
Ideal	

and represent in such advertisements, by description and prices, that said bedding and pillows advertised under the aforesaid names are of different qualities and make, the said bedding and pillows adver-

tised as Princess being lower in quality than that advertised as Progress, and, correspondingly, the said Progress bedding and pillows being lower in quality than that advertised as Washington, and, correspondingly, the said bedding and pillows advertised as Washington being lower in quality than that bedding and pillows advertised as Puritan, and that said bedding and pillows advertised as Puritan being lower or inferior in quality to the said bedding and pillows advertised as Ideal. Respondents in said advertisements vary the prices, in a similar manner, at which they offer the said various so-called grades or brands to the purchasing public. By using these said grade names and listing them separately in their said catalogues, respondents convey the impression to the purchasing public that said beds are all of different qualities and makes. The fact is that the said bedding hereinbefore mentioned is all manufactured from the same grade of feathers and covered by the same grade of ticking, and there is no difference in the grade, make or quality of said bedding.

Upon receipt of orders for the said bedding, respondents cause labels to be attached to the said bedding, upon which labels appear the trade names respectively of the purported grades, and the order is filled by shipping the said bedding so labeled to the customer at his point of residence.

By means of the aforesaid representations and things done by respondents, as above set out, respondents deceive the purchasing public into the belief that said purported high grades of bedding are of better quality and worth more than the lowest actual grade or quality thereof, and respondents thus secure from purchasers of said purported higher grades prices substantially in excess of the fair and reasonable value of the articles so sold, and substantially in excess of the prices at which respondents offer and sell the same articles as the lowest purported grade thereof.

PAR. 4. Among respondents' competitors also engaged in the sale of feather beds and pillows and allied articles in interstate commerce are many who do not make the misrepresentations mentioned in paragraphs 2 and 3 hereof, or other similar misrepresentations, and who truthfully represent and label the feather beds and pillows which they manufacture and sell.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 of an Act of Congress approved September 26,

Order.

S F. T. C.

1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the agreed statement as to the facts made and filed herein in lieu of the testimony and evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is now ordered, That the respondents, Joseph Gilbert and Jacob Gilbert, partners doing business under the trade name and style of American Feather Bed and Pillow Company, individual and as a partnership, do cease and desist from—

1. Representing in any manner that respondents, or any of them, manufacture commodities offered for sale or sold by them, unless and until respondents do actually manufacture such commodities.

2. Representing that commodities sold or offered for sale by them at varying prices differ in quality and make, according to the scale of prices at which such commodities are sold or offered for sale, when such is not the fact.

And it is further ordered, That the respondents within sixty days after the date of the service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Complaint.

IN THE MATTER OF
SUPERIOR WOOLEN MILLS.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 918—December 8, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture of men's made-to-order clothing and other garments from materials which it purchased from manufacturers and jobbers at the usual prices and in the sale of said clothing at retail through branch stores and to a small extent by mail, in competition with concerns which either as manufacturers of the cloth from which the garments were made, used the words "woolen mills" in their firm names, or as purchasers merely of such cloth, did not so do; and neither manufacturing, owning, nor operating any woolen mill;

(a) Used its corporate name, "Superior Woolen Mills," in the conduct of its business and featured the same in its circulars, posters, and newspaper advertisements; with the effect of misleading and deceiving the public into believing that by purchasing from it they were buying direct from the manufacturer of the cloth; and

(b) Falsely stated in its advertisements that the clothing manufactured and sold by it came "Direct from the weaver to the wearer with one small profit," or "Direct from weaver to wearer, saving you the middleman's profit";

With the capacity and tendency to mislead and deceive the public into believing that in purchasing from it they were buying direct from the manufacturer of the cloth and thus saving the profits of middlemen and and jobbers:

Held, That such misleading use of corporate name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mason, Spalding & McAtee of Washington, D. C. and *Edwards, Ogden & Peak* of Louisville, Ky., for respondent.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Superior Woolen Mills, hereinafter referred to as respond-