

Complaint.

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IN THE MATTER OF

ADOLPH GREENSPAN, IRVINE GREENSPAN, AND SAUL GOODMAN, PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF LEWIS FEATHER BED & PILLOW COMPANY.

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

Docket 1104—February 9, 1925.

SYLLABUS.

Where a firm engaged in the sale by mail of feather beds, pillows, and allied articles, which it purchased from manufacturers thereof and resold to the consuming public at a profit and at prevailing prices demanded by dealers generally for articles of like kind and quality, and neither owning an interest in, controlling, nor operating any factory; in advertising its products in newspapers, magazines and other publications and in catalogues, circulars, price lists and other trade literature,

- (a) Represented that it manufactured the articles in which it dealt and sold the same direct to the consumer, at factory prices, thus eliminating the profits of the middleman, and depicted the exterior and interior views of its pretended factory;
- (b) Represented that the prices demanded by it were much lower than those formerly charged, and set forth in its advertising such pretended former prices, which were much higher than any ever demanded or received by it;

With the effect of misleading the purchasing public into believing that in dealing with it, it was securing unusually favorable prices; and

- (c) Described its products as being of differing grades and qualities and offered and sold the same under different trade names and labels, at varying prices, the fact being that the products so described did not differ in grade or quality;

With the effect of deceiving the purchasing public and of securing from purchasers of the purported higher grades, prices substantially in excess of the fair and reasonable value thereof and 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. Louis Leftwich 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 Adolph Greenspan, Irvine Greenspan and Saul Goodman, partners doing business under the trade name and style Lewis Feather Bed & Pillow Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in 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 of Lewis Feather Bed & Pillow Company with their place of business in the city of Nashville, State of Tennessee. They are engaged in selling feather beds, pillows and allied articles direct to consumers located at points in 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 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 articles in interstate commerce and with the trade generally.

PAR. 2. 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 and/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 said 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. In connection with said representations respondents cause to be set out in said advertisements, catalogs and other trade literature, depictions of exterior and interior views of a factory for the

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manufacture of said commodities in connection with representations to the effect that said factory is owned or operated by respondents.

The fact is that respondents neither own, operate nor are interested in any plant or factory whatsoever for the manufacture of the commodities 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 the prices at which respondents are selling aforesaid commodities are much lower than prices previously charged by respondents for the same commodities respectively, which said purported previous prices are specifically set forth and are much higher than the prices actually demanded by respondents at the time said representations appear, which last named prices are likewise set out in said catalogs and other literature in connection with said representations.

Said representations are misleading and deceptive in that aforesaid purported former prices are much higher than any price which respondents have ever demanded for said commodities respectively.

Said misleading and deceptive representations have the capacity and tendency to and do mislead the public into the belief that the prices at which respondents actually offer said commodities and which appear in said catalogs and other literature, are unusually favorable prices and below the prices prevailing in the trade for similar commodities of like quality and value. Said actual prices are substantially the same in amount as the prices prevailing in the trade for articles of like kind and quality.

(c) 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 grade 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 of purported grade thereof.

PAR. 3. 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 21st day of December, 1923, issued and served its complaint upon the respondents, Adolph Greenspan, Irvine Greenspan, and Saul Goodman, partners doing business under the firm name and style of Lewis Feather Bed & Pillow Company, charging them with unfair competition in violation of Section 5 of said Act. The respondents having entered their appearance and filed an answer herein, 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 in 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.

Findings.

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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 partners doing business under the firm name and style of Lewis Feather Bed & Pillow Co., with their place of business in the city of Nashville, Tenn. They are engaged in selling 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 in the United States to said purchasers thereof, 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, also engaged in the sale of feather beds and pillows and allied articles throughout the various States, among which said competitors are the American Feather Bed & Pillow Co., the Western Feather & Pillow Co. of Dallas, Tex., the Sanitary Bed Co., at Charlotte, N. C., and the Standard Bed Co. of Greensboro, N. C., and the Purity Bedding Co. of Nashville, Tenn.

PAR. 2. Respondents conduct their said business, as follows: They cause advertisements to be published in newspapers, magazines and other publications of general circulation in the United States, and issue catalogs, circulars, price lists and other trade literature, which they send to customers and prospective customers throughout the United States, in which advertisements, catalogs, price lists and other trade literature, respondents describe the commodities which 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, direct to the purchasers thereof. In the aforesaid advertisements, catalogs and other trade literature, respondents make numerous false and misleading representations regarding their method of doing business and the nature and quality of the goods so offered and sold by them, among which representations is the following:

That respondents manufacture the aforesaid articles in which they deal and sell the same direct to the consumer, at factory prices, thus eliminating the profit of the middleman.

In connection with said representation respondents send catalogs and other trade literature in which is depicted the exterior and interior views of a factory for the manufacture of said commodities, represented to be owned or operated by respondents.

The fact is that respondents neither own nor operate, nor are they interested in any factory whatsoever, for the manufacture of the commodities in which they deal, but buy said commodities from the manufacturers thereof, and resell the same at a profit.

The aforesaid false and misleading assertions and representations have the capacity and tendency to and do mislead and deceive the purchasing public into the erroneous belief that said respondents own and operate a factory for the manufacture 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. The purchasing public are paying for respondents' products the prevailing prices demanded by dealers generally in the ordinary course of trade, for articles of like kind and quality.

PAR. 3. In the advertisements, catalogs and other trade literature mentioned in paragraph 2 hereof, respondents also represent:

That the prices at which respondents are selling the aforesaid commodities are much lower than the prices previously charged by respondents for the same commodities which said previous prices are specifically set forth and are much higher than the prices actually demanded by respondents at the time said representations appear, which last named prices are set out in said catalogs.

Said representations are misleading and deceptive in that said represented former prices are higher than any prices which respondents have ever demanded or received for said commodities.

Said misleading and deceptive representations have the capacity to and tend to and do mislead the purchasing public into the belief that the prices at which respondents actually offer said commodities, and which appear in said catalogs and other literature, are unusually favorable prices and below the prices prevailing in the trade for similar commodities of like kind and quality. Said prices are substantially the same in amount as the prices prevailing in the trade for articles of like kind and quality.

PAR. 4. In the advertisements, catalogs and other trade literature mentioned in paragraph 2 hereof, respondents further represent—

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

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The fact is that said commodities thus represented to be of different quality are all of the same grade and quality.

In connection with said false representations as last above set out, respondents have adopted different trade names for the several purported grades of commodities in this paragraph referred to, and offer said commodities under such respective trade names at substantially different prices. Upon receiving orders for commodities of said purported grades, respondents caused labels to be attached to said commodities upon which said labels appear the said trade names, respectively, of the purported grades of the articles sold.

By means of the aforesaid representations and things done by respondents pursuant thereto, as set out in this paragraph, respondents deceive the purchasing public into the belief that said articles of purported higher grade 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 grade, prices substantially in excess of the fair and reasonable value thereof, and substantially in excess of the prices at which respondents sell said articles as the lowest purported grade thereof.

PAR. 5. 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 Commerce approved September 26, 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,

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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, Adolph Greenspan, Irvine Greenspan, and Saul Goodman, partners doing business under the firm name and style of Lewis Feather Bed & Pillow Company, individually, 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 in any manner that the prices at which they sell or offer to sell commodities are lower than prices previously charged by them for like commodities when such is not the fact.

3. 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 thirty 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.

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IN THE MATTER OF
SAMSON ROSENBLATT.

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

Docket 1142—February 13, 1925.

SYLLABUS.

Where an individual engaged in the sale of a large quantity of baking powder originally sold by the manufacturer thereof to the Army and shipped to France, and which was in a deteriorated and damaged condition, advertised the same, with full knowledge of the aforesaid facts, at a price much lower than the regular market price thereof, together with the statement "material guaranteed to be in perfect condition," with the effect of deceiving the trade and consumers in reference to the quality thereof:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. Richard P. Whiteley for the Commission.

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 Samson Rosenblatt, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his principal place of business in the City and State of New York. He is engaged in the sale of drugs and chemicals to wholesale dealers located at points in various States of the United States. He causes said commodities when so sold to be transported from his said place of business in the City and State of New York, and in some instances from other points in the United States where he has stocks of said merchandise, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of his said business respondent is in competition with other individuals, partnerships and corporations similarly and otherwise engaged in the sale of drugs and chemicals in interstate commerce.

PAR. 2. Among said competitors of respondent is the Jacques Manufacturing Company, a corporation with its principal office and place of business in the city of Chicago, State of Illinois. It is, and for many years last past has been, engaged in the manufacture of a