

Complaint

IN THE MATTER OF
JACOB GENNETCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1970. Complaint, Sept. 22, 1931—Decision, Oct. 31, 1932*

Where an individual engaged in manufacture and sale of mattresses, sold said products in competition with genuine, all new material cotton mattresses and at prices lower than those at which such mattresses could be purchased, labeled as all new material and cotton, in purported compliance with laws of state in which thus sold for resale to ultimate consumer, notwithstanding fact said mattresses thus marked with the white labels specified by statute for those of all new material, contained rags, mattress ticking, cloth, clippings, previously manufactured articles worn about the person and other second-hand and filthy material; with effect of misleading and deceiving purchasers in respect of the composition of said mattresses, and with capacity and tendency to deceive both retail dealers and purchasing public in said respect, and to divert trade from competitors truthfully labeling their products:

Held, That such practices, under the circumstances set forth, were to the prejudice of competitors and the public, and constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Mr. Nathan H. Berger, of Newark, N.J., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the manufacture and sale of mattresses and quilts, and in selling said mattresses to purchasers in the various States of the United States, and with principal place of business in the city of Newark, N.J., with misbranding or mislabeling as to composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years last past, "has represented, designated, described, and referred to the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached or affixed to said mattresses so sold and distributed by him in interstate commerce labels", purportedly attached pursuant to State law and setting forth that the particular mattresses so labeled, were composed of all new material,¹ the facts

¹ The label set forth in the allegations of the complaint, may be found reproduced in the findings, in paragraph 2 thereof, on page 103.

being they were composed of second-hand and used material such as cotton felt, wool, wool rags, etc., all of which materials were second hand and in many instances filthy or unclean.

Such representations and statements, as alleged, "have had the capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public into the belief that the said representations and statements are true, and have tended to induce, and have induced, the purchase of respondent's mattresses in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured, competitors of respondent"; all to the prejudice of the public and competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Jacob Gennet, an individual doing business under his own name, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed an answer to the said complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony, and evidence received and brief in support of the allegations of the complaint (no brief being submitted by or for the respondent) and the Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jacob Gennet, is a resident of Newark, State of New Jersey, with his office and principal place of business located in said city and State and is now and has been for more than two years last past engaged in the manufacture of mattresses, and in the sale and distribution of said products to jobbers, storekeepers, and retail dealers located in the States of New Jersey and New York. He has caused said mattresses when sold to be shipped from his place of business in Newark, N.J., to purchasers thereof located in the State of New York, and in the course and conduct of his said business respondent was at all times herein referred to in competition with other individuals, and with firms, partnerships, and corporations

likewise engaged in the sale and distribution in interstate commerce of mattresses.

PAR. 2. In the course and conduct of his aforesaid business respondent manufactures and sells cotton mattresses, silk floss mattresses, hair mattresses, and shoddy mattresses. His principal sales are to storekeepers and to retail dealers and his plant has a capacity of one hundred mattresses a day. To the mattresses manufactured by respondent and sold and delivered by him to retailers in the State of New York respondent affixed labels on which the following reading matter appeared:

Do Not remove this label under penalty of law

This article contains all new material

Size 4/0 Cotton R. E.

Manufactured by

JACOB GENNET

Newark, N. J.

This tag is attached as required by law as a certification that the contents of this article are as represented in compliance with Chapter 369, Laws of 1918, of the State of New York.

4/0 Cotton R. E.

In the law of the State of New York referred to in the reading matter of the aforesaid labels so attached by respondent to its mattresses sold in New York there appears the following:

Section 389, p. — Tagging when new; *idem*, second-hand —: No person shall sell, expose for sale, deliver or consign for sale or have in his possession with like intent:

(a) Any mattress, upholstered spring bed or metal bed spring which contains only new material unless there is attached thereto a white tag signifying:

1. The name and address either of the manufacturer or of the vendor or of the successive vendors, and

2. A description of the filling used and a statement that all the material used is new; or

(b) Any mattress, upholstered spring bed or metal bed spring which contains any second-hand material unless there is attached thereto a yellow tag bearing the words "second-hand" and specifying:

1. The name and address either of the manufacturer or vendor or successive vendors.

2. A description of the filling used, and

3. The date of sterilization of the material used and name and address of the person, firm or corporation sterilizing it.

4. In the description of the material used upon any label or tag it shall be unlawful to use in the description of such material used as the filling, or in the construction of any mattress, upholstered spring bed, or metal bed spring, any term or designation likely to mislead.

The aforesaid labels or tags attached by respondent to the mattresses sold by him in the State of New York were white and upon

all of them the words "all new material" appeared. Certain inspectors of the Mercantile Bureau of the Department of Labor of the State of New York, whose duty it is to inspect mattresses and other articles of bedding in order to ascertain whether said articles being sold in the State of New York are properly labeled or branded, visited a number of retail establishments in the city of Yonkers, Westchester County, N.Y., and opened a number of cotton mattresses manufactured by respondent and delivered by him to said retail establishments from his place of business in Newark, N.J., all of which mattresses contained the white label quoted in paragraph 2 of these findings. None of the mattresses so opened by said inspectors contained all new material, but they all contained not only cotton but rags, mattress ticking, cloth clippings and previously manufactured articles which were definitely ascertained to have been worn about the person, such as pieces of mattress ticking with the tufting cords still attached thereto, rags that were blood stained, pieces of wool, velvet clippings that had been used, parts of finished garments, pieces of mattress ticking that were so discolored as to indicate that they had been taken from used mattresses and various other second-hand and filthy material. No mattress of respondent that was opened contained all new material as it was labeled or branded to contain.

PAR. 3. The mattresses sold and distributed by respondent in the State of New York as herein described, which mattresses contained second-hand material and were labeled as containing all new material, when sold in competition with cotton mattresses actually containing all new material and at prices lower than the purchasers of said mattresses could secure cotton mattresses containing all new material. At least one of the retail dealers in the city of Yonkers, N.Y., who purchased mattresses from respondent to which were affixed white labels indicating that their contents were all new material, when proceedings were brought by the State of New York for violation of the mattress label law, entered a plea of guilty and had a sentence imposed upon him by the court, which sentence was suspended.

PAR. 4. The representations made by respondent in the labels or tags attached to the mattresses containing filthy and second-hand material to the effect that said mattresses contained all new material were false in fact and the use of the white labels or tags upon the mattresses sold in the State of New York by respondent misled and deceived the purchasers of said mattresses into the belief that they contained all new material, and the aforesaid representations and the use of the said white tags or labels had and have the capacity and tendency to deceive both retail dealers and the public purchasing said mattresses from said retail dealers into the belief that the mattresses really contain all new material and the aforesaid false rep-

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representations and misbranding or mislabeling are unfair to the purchasing public and to competitors of respondent who truthfully label their products and have the capacity and tendency to divert trade from such competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence introduced, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent has 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 respondent, Jacob Gennet, and his agents, representatives, and employees in connection with advertising, offering for sale and sale in commerce between and among the several States of the United States and in the District of Columbia of mattresses, do cease and desist from directly or indirectly—

1. Designating or describing or representing mattresses made in whole or in part of second-hand or used material as mattresses made of or containing all new material.

2. Labeling or branding mattresses composed in whole or in part of second-hand or used material with labels or tags of such color or design as to import or imply that said mattresses are manufactured of or contain all new material.

3. Representing or designating mattresses manufactured from shoddy or other second-hand material as made of or containing all new material.

It is further ordered, That respondent shall, within 60 days after service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with and conformed to the order to cease and desist hereinabove set forth.

IN THE MATTER OF

NATHAN GENNET, AN INDIVIDUAL TRADING UNDER
THE NAME AND STYLE OF CENTRAL QUILT & MAT-
TRESS Mfy.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 1977. Complaint, Oct. 13, 1931—Decision, Oct. 31, 1932

Where an individual engaged in manufacture and sale of mattresses, sold said products in competition with genuine, all new material cotton mattresses and at prices lower than those at which such mattresses could be purchased, labeled as all new material in purported compliance with laws of State in which made, and with labels of same color specified by law of State in which sold to retailers for resale to ultimate consumer, for all new material mattresses, notwithstanding fact articles thus marked contained shoddy, rags, and other second-hand material, some of which had indications of having been used about the person; with effect of misleading and deceiving purchasers in respect of the composition of said mattresses, and with capacity and tendency to deceive both retail dealers and purchasing public in said respect, and to divert trade from competitors truthfully labeling their products:

Held, That such practices, under the circumstances set forth, were to the prejudice of competitors and the public, and constituted unfair methods of competition.

Mr. Richard P. Whiteley for the Commission.

Isserman & Isserman, of Newark, N.J., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged as Central Quilt & Mattress Mfy. in the manufacture and sale of mattresses and quilts, and with principal place of business in Newark, N.J., with misbranding or mislabeling as to composition of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, for more than two years last past, "has represented, designated, described, and referred to the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached or fixed to said mattresses so sold and distributed by him in interstate commerce labels", in purported