

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

compliance with the requirements of State laws, setting forth that mattresses in question were composed of all new material;¹ facts being mattresses thus labeled were composed of second hand and used materials, such as cotton, cotton rags, jute, etc., all of which materials were second hand and in many instances filthy or unclean.

Such representations and statements by respondent, as alleged, "by means of which he has offered for sale and sold or is selling his products as set forth * * *, 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, Nathan Gennet, an individual trading under the name and style of Central Quilt & Mattress Mfg., 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 conclusions drawn therefrom:

¹ Labels in question, as alleged, and set forth in the complaint, were as follows:

DO NOT REMOVE THIS LABEL Under Penalty of Law

This Article Contains ALL NEW MATERIAL Consisting of

Manufactured by Central Quilt & Mattress Mfg., 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 Article 25-B of the General Business Law of the State of New York.

DO NOT REMOVE LABEL Under Penalty of the Law of State of New Jersey

This mattress is made of all new material. Central. Central Quilt & Mattress Mfg., N. GENNET, Prop., Newark, N.J. Contains COTTON R. E.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nathan Gennet, an individual trading under the name and style of Central Quilt & Mattress Mfy., is a resident of Newark, State of New Jersey, with his office and principal place of business located in said State and is now and has been for more than two years 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 business respondent manufactures and sells all kinds of mattresses, including hair mattresses, silk mattresses, kapok mattresses, cotton mattresses, napper mattresses, and woolen material mattresses. The plant of respondent has a capacity of about one hundred mattresses a day and the output is usually from twenty to forty mattresses a day. To certain mattresses manufactured by respondent and sold and delivered by him to retail dealers in the State of New York during the years 1930 and 1931 the respondent affixed white tags or labels on which the following reading matter approved in red lettering:

DO NOT REMOVE THIS LABEL Under Penalty of the Law of State of New Jersey	
This mattress is made of all new material	CENTRAL
CENTRAL QUILT & MATTRESS Mfy. N. Gennet, Prop. 210 W. Kinney St., Newark, N.J.	
CONTAINS NAPPER	

The law of the State of New York with reference to the labeling or branding of mattresses sold within that state contains the following provision:

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 labels or tags attached by respondent to certain mattresses sold by him in the State of New York during the years 1930 and 1931 were white and upon all of them the words "this mattress is made of all new material" appeared. 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 certain retail establishments in the city of New York during the month of March, 1931, and opened a number of mattresses manufactured by respondent and delivered by him to said retail dealers from his place of business in Newark, N.J., to all of which mattresses were affixed 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 second-hand material, consisting of cotton, jute, rags, cloth clippings, and mattress ticking and some of the said material was not only second-hand but was discolored and had a stale, sweaty, and musty odor indicating that it had been used on or about the person. No mattress of respondent that was opened by said inspectors contained all new material as it was labeled or branded to contain.

PAR. 3. The mattresses sold and distributed by the respondent in the State of New York as herein described, which mattresses contained second-hand material and were labeled as containing all new material, were sold in competition with mattresses actually containing all new material at prices lower than the purchasers of said mat-

tresses could secure mattresses actually containing all new material. Some of the mattresses sold by respondent to retailers in the city of New York as herein stated to which the respondent had attached white labels indicating the material of said mattresses as being of new material and which also designated the material as being napper were found to contain shoddy or second-hand material.

PAR. 4. The representations made by respondent on the labels or tags attached to the mattresses containing used or 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 by the respondent in the State of New York misled and deceived the purchasers of the 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 said mattresses really contained all new material, and the aforesaid false 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 said 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, Nathan 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
MENKE GROCERY COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1993. Complaint, Jan. 14, 1932—Decision, Oct. 31, 1932

Where a corporation engaged in sale of groceries, stock powders, and other merchandise at retail through orders secured through its house-to-house canvassers,

- (a) Described and represented itself on its letterheads, order blanks, and other trade literature as a wholesale grocer and displayed upon said letterheads, etc., the legend "United States Food Administration License G-30152" and represented to the public through its said canvassers that its business was done under the license and approval of the Government and its merchandise inspected and approved by officials thereof, facts being it was not in any sense a wholesale grocer and its products were not inspected by the Government and its Food Administration license along with other similar licenses had expired with the abolition of said administration by executive order years before;
- (b) Guaranteed satisfaction to the customer and reimbursement of the purchase price upon the return of any goods as to which the customer was dissatisfied and through its canvassers promised prompt shipment of merchandise ordered and prepayment of transportation charges where shipments were made by express or freight, facts being it failed to make such prepayment and frequently failed and refused to return purchase price as promised or to make prompt shipments or to ship at all, notwithstanding payment for goods had been made in full;
- (c) Represented certain of its merchandise as pure and genuine extracts and supplied samples indicating merchandise of very high and superior grade, to its canvassers who generally represented said samples as indicative of merchandise to be supplied pursuant to customer's order, facts being extracts shipped were imitation, and merchandise supplied to customer was generally far inferior to sample; and
- (d) Represented its "Chickena" powder as an effective medicine for various fowl diseases and effective in causing hens to lay, and its "Lion Brand Stock Powder" as "a great stock remedy and conditioner", and promised return of purchase price of either product in event same should not be satisfactory to customer, facts being said products were not effective for purposes represented, and it failed to return purchase price thereof, notwithstanding expressions of dissatisfaction by customers in many instances and return of said last-named product;

With effect of deceiving customers and with capacity and tendency so to do, and induce purchase of its merchandise on account of their belief in truth of such representations, and thereby divert business from its competitors to their injury:

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