

Complaint

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IN THE MATTER OF
SCHULTZ & HIRSCH COMPANY

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

Docket 2105. Complaint, June 9, 1933—Order, Aug. 6, 1934

Consent order requiring respondent, its officers, etc., in connection with sale or distribution of mattresses or similar articles in interstate commerce or the District of Columbia, or to promote the purchase and use by dealers and the consuming public thereof, to cease and desist from—

“Directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public”;

Provided that nothing above shall be construed as authorizing or permitting respondent, officers, etc., “to coerce, induce, or cause any dealers or merchants to enhance their prices, or to fix or charge uniform or enhanced resale prices in the marketing of aforesaid articles to the consuming public.”

Mr. Henry Miller for the Commission.

Altheimer, Mayer, Woods & Smith, of Chicago, Ill., 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 Schultz & Hirsch Company, 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, Schultz & Hirsch Company, is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State. It is and for many years last past has been engaged in the business of manufacturing mattresses, of selling

and distributing such mattresses in commerce among the various States of the United States to dealers and users, including retail department stores, furniture stores, and other purchasers, and of promoting the purchase and use of such mattresses by the consuming public throughout the United States. Respondent causes said mattresses when sold to be shipped and transported from its factory and place of business in the State of Illinois, through and into other States of the United States to the respective purchasers thereof; and in its sale and distribution of such mattresses, respondent has been at all times herein mentioned and still is engaged in interstate commerce.

There are and have been numerous persons, partnerships, and other corporations, manufacturers, or vendors of mattresses, engaged in the business of selling and distributing their mattresses in commerce in, between and among various States of the United States to the purchasing public, to wit: department stores, furniture stores, and other dealers and users, in the respective States and sections of the United States in which respondent does business. At all times herein mentioned respondent has been and is carrying on and conducting its aforesaid business, and has been and is selling and distributing its mattresses, in direct, active competition with said persons, partnerships, and other corporations, and with manufacturers and vendors of mattresses generally.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and during a period of more than three years last past, respondent has followed and continues to follow the practice of selling and distributing mattresses to which it has affixed labels conspicuously displaying certain purported resale or retail prices of such mattresses, which prices are not the real, actual, usual or regular retail or resale prices or the prices at which such mattresses are or have been sold at retail or otherwise, nor the prices at which such mattresses are or have been intended by respondent or its vendees to be resold to the purchasing or consuming public; but, on the contrary, are and have been false, fictitious, and inflated prices, greatly in excess of the true value, or of the usual, regular or customary retail or resale prices of said mattresses. The said price marks remain displayed upon said mattresses throughout the channels of trade and distribution to the consuming public and they are and have been placed upon such mattresses by the respondent with its knowledge of their false and fictitious character, and with the intent and purpose of misleading and deceiving the purchasing and consuming public as to the true value and the regular, usual or customary selling prices of said mattresses. Among said false, ficti-

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tious, and inflated price marks placed upon said mattresses by respondent is the price mark of \$39.50 sewed and displayed upon mattresses sold by respondent to its dealer-purchasers at prices ranging from \$10.50 to \$13 each and resold to the consuming public in the regular course of business by dealers at the retail or resale price of \$19.75 each.

PAR. 3. The use by respondent of said practice of causing its mattresses to be labeled with and marketed under said false, fictitious and inflated price marks, as above described, was calculated to mislead and deceive, and has and had the capacity, tendency, and effect of (1) misleading and deceiving the purchasing and consuming public as to the quality, value, grade and price of such mattresses; and (2) of aiding, enabling, or causing dealers to sell such mattresses to the consuming public—

(a) at so-called half prices purporting to constitute 50 percent reductions in such dealers' prices but which reductions are in fact false and fictitious; or

(b) upon false or misleading representations to the effect that such dealers' prices to the consuming public are reduced prices, that their prices have been reduced from the prices set forth in such price labels, that such purported reduction by dealers is a genuine, bona fide reduction in price by which purchasers are saved sums of money equivalent to the amount of such reduction, that said price marks which respondent caused to be affixed to said mattresses as above described represent the current, regular or usual retail prices or such dealers' regular or usual retail price of said mattresses and for mattresses of their grade and quality, and that such mattresses are higher priced mattresses, being offered for sale or sold at greatly reduced prices or lowered prices.

To promote the sale and distribution of said mattresses under said false, fictitious, or inflated price marks, respondent has aided and assisted dealers in procuring certain advertising matrices and forms of advertisements setting forth said false and fictitious price marks and reductions in price, which advertising matter, pursuant to respondent's intention and purpose, is and has been used by such dealers to advertise and promote the resale of such mattresses to the consuming public upon said false or misleading representations as to prices, reduction in prices, quality, value, grade and saving to consumer.

PAR. 4. The use by respondent of said false, fictitious, or inflated price marks, and of the misleading and deceptive representations, acts and practices, hereinabove set forth, is unfair and tends to, and does (a) prejudice and injure the public, (b) unfairly divert trade

from and otherwise prejudice and injure respondent's competitors, and (c) operate as a restraint upon or a detriment to the freedom of fair and legitimate competition in the industry and trade engaged in the manufacture and sale of mattresses and allied products; and constitutes unfair methods of competition in commerce in violation of Section 5 of the 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.

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission issued under Section 5 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", and respondent's supplemental answer thereto that respondent waives hearing on the charges set forth in the complaint, refrains from contesting the proceeding and pursuant to the provisions of paragraph (2) of Rule III of the Commission's Rules of Practice, consents that the Commission may make, enter, and serve upon respondent, without evidence and without findings as to facts or other intervening procedure, an order to cease and desist from the method or methods of competition alleged in the complaint; and the Commission having duly considered the matter and being fully advised in the premises—

It is now ordered, That, in the course or conduct of the business in interstate commerce or in the District of Columbia of selling or distributing mattresses or similar articles of bedding, or of promoting the purchase and use by dealers and the consuming public of mattresses or similar articles of bedding, respondent Schultz & Hirsch Company, its officers, directors, agents, servants, and employees cease and desist:

From directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be

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marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public.

It is further ordered, That nothing herein contained shall be construed as authorizing, requiring, or permitting respondent or its officers, directors, agents, servants, or employees to coerce, induce, or cause any dealers or merchants to enhance their prices or to fix, maintain or charge uniform or enhanced resale prices in the marketing of the above-mentioned articles to the purchasing or consuming public.

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

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IN THE MATTER OF

NACHMAN SPRING-FILLED CORPORATION

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

Docket 2106. Complaint, June 9, 1933—Order, Aug. 6, 1934

Consent order requiring respondent corporation, its officers, etc., in connection with the sale or distribution of spring units or spring constructions for use in mattresses and similar articles, or of supplying and distributing specifications for the manufacture of such articles or of selling and otherwise supplying to mattress manufacturers labels to be affixed to or used in connection with the sale of such various articles, or of promoting the purchase and use by dealers and consuming public of such springs and mattresses, to cease and desist from—

“Directly or indirectly causing the use of, or aiding, abetting, encouraging, or otherwise assisting dealers or other sellers of mattresses and similar articles of bedding in using or causing to be used, any price or value marks in the branding, labeling, displaying, advertising, offering for sale or selling of such articles to the consuming public when such price or value mark indicates or represents a price or value which does not represent a true estimate in good faith of the price at which said mattresses and similar articles of bedding are to be sold to the public, or a value or price at which they are intended to be priced and sold, and are so priced and sold currently in the usual course of trade, so that such goods will not be marked up with the intention of thereafter marking them down for the purpose or with the effect of conveying incorrect impressions as to the extent of bargains or price concessions offered the public”;

Provided that nothing above shall be construed as authorizing or permitting respondent, officers, etc., to “coerce, induce or cause any dealers or merchants to enhance their prices, or to fix or charge uniform or enhanced resale prices in the marketing” of aforesaid articles to the consuming public.

Mr. Henry Miller for the Commission.

Alzheimer, Mayer, Woods & Smith, of Chicago, Ill., 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 Nachman Spring-Filled Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate