

Complaint

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

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

PARAGRAPH 1. Respondent, Nachman Spring-Filled Corporation, is a body corporate organized and existing under the laws of the State of Illinois, having its principal and executive offices 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 (1) of manufacturing, selling, and distributing the mattress manufacturers and other manufacturers throughout the United States, spring units or spring constructions, commonly known as Nachman springs, for use in and as part of inner-spring mattresses and box-spring mattresses or upholstered box springs manufactured by such purchasers; (2) of selling and otherwise supplying and distributing to said mattress manufacturers throughout the United States specifications for the manufacture of mattresses containing said Nachman springs; (3) of selling and otherwise supplying to mattress manufacturers certain labels to be affixed by such manufacturers upon mattresses containing said Nachman springs and under which labels such mattresses are and have been marketed to the trade and consuming public throughout the United States; and (4) of promoting the purchase and use by the dealers and the consuming public throughout the United States of mattresses containing said Nachman springs and mattresses manufactured pursuant to said specifications. In the sale and distribution of its said spring units or spring constructions and other products, respondent has caused and continues to cause the same when sold to be shipped and transported from its factories, warehouses or other places of business in certain States into and through various States other than the States in which such respective shipments originated. Respondent carries on its said business in interstate commerce and throughout the course of such business has continuously engaged in such interstate commerce.

PAR. 2. There are and, at all times herein covered, have been sundry other corporations, persons, partnerships, and firms engaged in the business of selling and distributing, in commerce in, between, and among various States of the United States, certain products manufactured or purchased by them, to wit, spring units or spring constructions for inner-spring and box-spring mattresses, mattresses and allied products, which products are competitive to respondent's aforesaid products and the said mattresses manufactured under respondent's specifications or containing respondent's spring units or spring constructions. Respondent has been and still is conducting its said business and offering for sale, selling and distributing its spring units or

spring constructions, and promoting the purchase and use by dealers and the consuming public of mattresses manufactured under respondent's specifications or containing its said springs, in direct, active competition with said other corporations, persons, firms and partnerships, and with competitors generally in all parts of the country.

PAR. 3. In the course and conduct of its said business and during the period of more than three years last past, respondent has engaged in and continues to engage in the practice of causing mattresses manufactured under respondent's aforesaid specifications and containing its spring units or spring constructions to be sold and distributed to dealers and the consuming public under labels affixed thereto and conspicuously displaying certain purported resale or retail prices of such mattresses and purporting to be genuine prices and the regular or usual retail or resale prices voluntarily fixed or followed by the respective dealers in such mattresses; whereas in truth and in fact—

(1) the said prices marked or labeled upon said mattresses are not the real, actual, or usual retail or resale prices nor 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 dealers to be resold to the purchasing or consuming public, nor are such prices any real retail or resale prices voluntarily fixed or followed by the respective dealers;

(2) the said prices are and have been, false, fictitious or inflated prices, greatly in excess of the true value, or of the usual, regular, or customary retail or resale prices of said mattresses, and are not any real or genuine prices independently or voluntarily fixed or followed by the respective dealers.

The said price labels remain displayed upon the mattresses throughout the channels of trade and distribution to the consuming public; and they are and have been used upon such mattresses with the respondent's knowledge of their false and fictitious character and pursuant to an intention and purpose on the part of respondent to mislead and deceive the purchasing and consuming public as to the true value or as to the regular, usual or customary retail selling prices of said mattresses. Among said false, fictitious, and inflated prices marked upon said mattresses is the price of \$39.50 sewed and displayed upon so-called Nachman mattresses sold by various manufacturers thereof to dealers at prices ranging from \$10.50 to \$13 and resold by such dealers to the consuming public in the regular course of trade at the retail or resale price of \$19.75.

PAR. 4. Respondent's practice of causing said false, fictitious, and inflated price marks to be labeled upon said mattresses containing its springs 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 value, grade, quality 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, retail prices or such dealers' regular retail prices for 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.

In promoting the sale and distribution of said mattresses under said false, fictitious, or inflated price marks respondent supplies to dealers certain advertising matrices and suggested 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 upon said false or misleading representations as to prices, reduction in prices, quality, value and saving to consumer.

PAR. 5. 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 the manufacturers and vendors of mattresses which are competitive to the mattresses containing respondent's spring units or spring constructions, (c) operate as a restraint upon and 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, including spring units or spring constructions for inner-spring and box-spring mattresses; 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

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 spring units or spring constructions for use in or as part of mattresses and similar articles of bedding, of selling or otherwise supplying and distributing specifications for the manufacture thereof, of selling and otherwise supplying to mattress manufacturers and others labels to be affixed to or otherwise used in connection with the sale of mattresses and similar articles of bedding, or of promoting the purchase and use by dealers and the consuming public of said springs, mattresses and similar articles of bedding, respondent Nachman Spring-Filled Corporation, 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 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.

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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, Nachman Spring-Filled Corporation, 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.

Syllabus

IN THE MATTER OF

MIXER MEDICINE COMPANY, CHARLES M. MIXER,
PROPRIETOR

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

Docket 1914. Complaint, Feb. 19, 1931—Decision, Aug. 7, 1934

Where an individual engaged in the sale of cancer medicines and pastes, manufactured by, or prepared for, him; in describing the same in circulars, booklets and letters and on containers and labels of the bottles thereof, and through booklets sent to customers and prospective customers containing hundreds of purported testimonials from persons claiming to have been cured of cancer by the use of his said remedies, and depicting scores of gruesome pictures of persons who had been afflicted with said ailment—

- (a) Falsely represented that his said preparations had therapeutic value and constituted proper treatment and cure for all kinds of cancer and scrofula, and had restored to perfect health hundreds suffering from cancerous and scrofulous afflictions, facts being they had no therapeutic value or effect in such diseases and their use was dangerous to the lives and health of those taking the same in that they postponed the procurement of proper and efficacious treatment for said diseases, and said medicines had not restored to perfect health hundreds suffering therefrom or helped, aided, or relieved any person afflicted therewith, and the depictions referred to had the tendency and capacity to deceive those observing such depictions into the erroneous belief that those depicted therein had been cured of their afflictions, or could be cured thereof, through the medicines involved;
- (b) Included the prefix "Dr." or "Drs." with said individual's name on the labels of such medicines and displayed said prefixes together with his name in the reproductions of hundreds of testimonial letters, notwithstanding fact that said individual was neither a physician or surgeon, or chemist or pharmacist, but was the son of a doctor who founded and carried on the business involved for many years prior to his retirement and death; and
- (c) Falsely represented that he could adequately diagnose and properly prescribe for cancer and scrofula from a layman's answers to a list of questions which he propounded in questionnaires sent to patients writing him, who had or suspected the presence of cancer, and which he made use of as a basis for prescribing his cancer remedies, without physical examination of the patient, on the basis of the information therein supplied, which contained questions as to the physical condition of the patient, facts being said diseases could be correctly diagnosed only through a careful physical examination by a competent physician;

With tendency and capacity to mislead and deceive ultimate consumers of said preparation into the belief that such statements and representations were true, and induce the purchase of said medicines in such belief, and divert trade to him from competitors engaged in the sale of radium and X-ray apparatus for use in the treatment of said afflictions: