

Complaint

IN THE MATTER OF
GARTEN TABLE PAD COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2732. Complaint, Feb. 28, 1936—Decision, Sept. 25, 1936*

Where a corporation engaged in manufacture of two styles of table pads of similar size, shape, and general appearance, more costly of which had a bottom covering or back composed of genuine felt, or wool fibers or wool and cotton materials, matted together in layers, compressed and shrunk, and less costly of which had inferior cotton bottom covering or back of duvetyn, velourette, or velveteen, and in sale thereof to retail stores in District of Columbia and some thirty States for resale to purchasing and consuming public—

Labeled as “felted back” miniature pads or samples of latter style or quality, left by it for exhibition on retail stores’ counters and display stands as basis for orders to be taken by retailer and forwarded to it for filling from its factory, along with “genuine felt” label samples of former, more costly style;

With capacity and tendency to confuse, mislead, and deceive substantial number of purchasing public into belief that said “felted back” pads were backed with genuine felt and with effect of causing such purchasing public to buy substantial quantities thereof in such erroneous belief, and of unfairly diverting thereby trade to it from competitors, who do not in any way misrepresent material or materials from which their said pads are made; to their substantial injury and prejudice:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

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, having reason to believe that Garten Table Pad Company, Inc., a corporation, hereinafter referred to as respondent, has been, and is, using unfair methods of competition in commerce, as “commerce” is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Garten Table Pad Company, Inc., is a corporation organized, existing, and doing business under and by

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virtue of the laws of the State of Pennsylvania, with its principal office at 131 Market Street, Philadelphia, Pa. It is now, and for several years last past has been, engaged in the manufacture and sale of table pads between and among the various States of the United States and in the District of Columbia. Respondent now causes, and for more than one year last past has caused, such products when sold by it to be shipped from its place of business in Philadelphia, Pa., to the purchasers thereof, some located in the State of Pennsylvania, and others located in the various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in table pads between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale of table pads between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in the sale and offering for sale of certain table pads manufactured by it, represents, and for more than one year last past has represented, through circulars distributed among the retail trade, that the pad it offers for sale and sells has "a soft back covering that will not harm the polished surface of a table. Can be had in a felted or genuine felt back, depending on the quality of the pad." Respondent also furnishes its customers located in different States of the United States and in the District of Columbia with samples of its said table pads for display, which samples are displayed by said customers in soliciting orders for, and in the sale of, said pads to the purchasing public. Stickers or labels affixed to said display samples and also to the pads sold to the ultimate purchasers carry, in part, the following phraseology:

MONOPAD**WASHABLE LEATHERETTE TOP**

(Guaranteed to be a Pyroxilyn Coated Fabric)

FELTED BACK

(Choice of Meadow Green or Furniture Brown)

In truth and in fact, the padding or back covering of said table pads is not composed of or made of felt as the term "felt" is understood, used, and accepted by the retail trade and the purchasing public,

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but the said padding is or back covering is composed of or made of a material or materials other than felt.

PAR. 3. Genuine felt is a fabric made by interlocking or matting together wool, hair, or fur, or a mixture thereof, by the action of heat, moisture, and pressure, without weaving, and often with the aid of glue. The term "felted" is applied to woven fabrics which have been subjected to a napping and felting process to make a more closely knitted material which has somewhat the appearance of genuine felt. To the purchasing public and to many wholesale and retail buyers the terms "felt" and "felted", when applied to fabrics, are synonymous.

It is generally understood and commonly believed among wholesalers, retailers, and the purchasing public that genuine felt table pads are the best pads obtainable and due to such belief and understanding there is a widespread public demand for and general use of genuine felt pads.

PAR. 4. The use by the respondent of the representations set out in paragraph 2 hereof, has had and does have the capacity and tendency to mislead and deceive, and does mislead and deceive wholesalers, retailers, and the purchasing public into the belief that said table pads are made of felt, and to purchase substantial quantities of said pads from respondent in such erroneous belief. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby "felted" table pads are passed off to the purchasing public as genuine felt pads. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of genuine felt table pads who do not misrepresent the material or materials contained in their table pads or the process by which their pads are manufactured, who likewise advertise, sell, and distribute table pads among the various States of the United States, and in the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors; thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's 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..

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to define its powers and duties, and for other purposes," the Federal Trade Commission, on February 28, 1936, issued and served its complaint in this proceeding upon respondent, Garten Table Pad Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by M. S. Garber, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, respondent having declined to file brief or apply for oral argument; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Garten Table Pad Company, is a corporation organized in April 1932, and doing business under the laws of the State of Pennsylvania, having its principal office and place of business at 131 Market Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent is, and has been at all times since the said date of its incorporation, engaged in the manufacture and sale of table pads to retail stores located in the District of Columbia and in about thirty States of the United States of America, for resale to the purchasing and consuming public. It has caused, and still causes, its said table pads, when so sold, to be transported in commerce from its place of business in the city of Philadelphia, State of Pennsylvania, into and through certain other States of the United States and into the District of Columbia, to the said purchasers thereof.

PAR. 3. At all times since April 1932, the respondent has been in direct and substantial competition in interstate commerce with other corporations, individuals, and partnerships engaged in the manufacture and sale of table pads as aforesaid.

PAR. 4. Table pads are used to protect the table surface from hot dishes, and in constructing pads for that purpose it is necessary that

said pads have a certain amount of insulation value. Insulation is usually accomplished by building up certain thickness of cardboard, alone or in combination with material known as deadening felt. These materials are then covered on both sides; the top by waterproof washable fabric, and the bottom or back with a soft fabric that will not damage the surface of the table.

Respondent manufactures and sells two types of table pads. The construction and materials used in both types are substantially the same with one exception. The exception is in the materials used as the bottom covering or back of the pads. In one type of pad the bottom covering or back is felt, a material produced from wool fibres, or wool and cotton materials, which have been matted together in layers, compressed, and shrunk. In the other type, the bottom covering or back is a cotton goods material or sheeting that is converted by several processes into a soft fabric, known variously as duvetyn, velourette, or velveteen, which is inferior in quality to felt. Felt is distinguished from other materials, and especially the materials used by respondent in its pads labeled "felted back", not only by the materials used in its manufacture but also by the distinctive process of manufacture. The pad with the felt back sells for \$3.98 to \$4.98, retail. The price of the pad backed with the materials other than felt ranges from \$2.98 to \$3.98, retail. The two types of pads are almost identical in size, shape, and general appearance. The only material difference is in the type and quality of the backing.

PAR. 5. Respondent contacts retail stores, through which it markets its pads, in two ways. One method is by mail, enclosing a description of its pads, price lists, and an inducement to buy respondent's pads. This inducement usually takes the form of an offer to cooperate in advertising costs. The other plan is to have the salesmen call on retail stores and submit the plan and samples.

Sample pads, miniatures of the pads sold, are exhibited on the counters and display stands in the retail stores. Orders for the table pads, based upon the samples so exhibited, are taken by the retailer and forwarded to the respondent manufacturer, who fills the orders from its factory. Respondent sold over \$50,000 worth of pads in 1935, and its business has increased annually since its beginning.

Until September 1935, the miniature pads, or samples, exhibited in the retail stores, and from which orders were taken, bore gum-back labels. The sample pad with the genuine felt back bore a label about three by eight inches in size on which appeared the following:

MONOPAD
WASHABLE LEATHERETTE TOP
GENUINE FELT BACK

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The sample pad with the cotton goods back bore a label about three by eight inches in size on which appeared the following:

MONOPAD
WASHABLE LEATHERETTE TOP
FELTED BACK

To experts, buyers, and members of the purchasing and consuming public, the terms "felt" and "felted" are synonymous. To buyers and the average purchaser-consumer a table pad labeled "felted back" means a table pad with a genuine felt back.

PAR. 6. The representations of respondent, as aforesaid, have had, and do have, the capacity and tendency to confuse, mislead, and deceive a substantial number of the purchasing public into the belief that said table pads labeled "felted back" are backed with genuine felt, and have caused, and do cause, said purchasing public to purchase substantial quantities of respondent's pads in such erroneous belief.

PAR. 7. There are, among competitors of respondent, corporations and individuals who likewise manufacture and sell table pads among the various States of the United States and in the District of Columbia, who do not in any way misrepresent the material or materials from which their table pads are made. Respondent's acts and practices, as hereinabove set forth, tend to, and do, unfairly divert trade to respondent from such competitors, to the substantial injury and prejudice of said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Garten Table Pad Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein in support of the complaint, respondent having declined to file brief or apply for oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved

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September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Garten Table Pad Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of table pads in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, through the use of labels or otherwise:

That said table pads are backed with felt when said pads are not backed with felt, a material produced from wool fibres, or wool and cotton materials, which have been matted together, compressed and shrunk.

It is further ordered, That the respondent shall, within 60 days after service upon it 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 this order.

IN THE MATTER OF
MORRIS GOTTSEGEN AND DAVID JACOBY, DOING BUSINESS AS MILLS SALES COMPANY

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

Docket 2864. Complaint, June 30, 1936—Decision, Sept. 25, 1936

Where a firm engaged as importers of and wholesale dealers in a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, shaving creams, offered in pretended "giant" sizes, razor blade hones, and other toilet articles—

- (a) Described many articles and items of merchandise listed in their catalogs and price lists as possessing retail values many times in excess of the actual selling price to the retailer or other purchaser and many times in excess of the actual value thereof, and stamped or printed on various items and articles offered, or on labels attached thereto, or on containers thereof, retail prices many times in excess of actual price thereof as sold by peddler or retailers to consuming public, and many times in excess of their true and actual value, through such practice as designating as "Honor" brand "Dental Creams, Large Sizes Marked 35¢", creams with said price printed on cartons thereof, but offered at 60¢ per dozen or \$6.50 per gross, "Brushless" brand "Shaving Cream—Giant 50¢, 60¢, and 75¢ Sizes", creams with 60¢ printed as price on cartons, but offered at 72¢ a dozen or \$8.25 per gross, and razor blade hones "Marked to sell at \$1.00", while offered at 45¢ per dozen or \$5.00 per gross, and in their catalogs set forth many other instances showing the "spread" between the dozen or gross rate at which the commodities were offered and sold, and the fictitious retail prices marked thereon, which various prices were not those at which different items were expected to be sold, but were greatly in excess of those at which same were intended to be sold and were sold in usual course of trade;
- (b) Caused word "Manufacturers" to appear on letterheads and advertising matter used by them in soliciting sale of and selling their aforesaid products, notwithstanding fact they were not manufacturers and did not own, operate, or control any factory in which products sold and distributed by them in interstate commerce were made;
- (c) Used abbreviation "Dr." in connection with various commodities offered by them, through such statements as "Dr. Jay's High Quality Tooth Brushes," with depiction of brush and name "Dr. Jay" on handle thereof, and thus associated said name with their "Rubbing Alcohol," and with certain dental creams, in connection with which name "Dr. Sach's" was also set forth, notwithstanding facts products thus marked, stamped, branded, advertised, and sold were not made in accordance with design or under supervision of a doctor and did not contain special or scientific features as a result of medical advice or services;

With result of placing in hands of peddlers and retailers buying for resale an instrument and means enabling them to commit a fraud upon a substantial portion of the consuming public, through representing and offering said tooth