

IN THE MATTER OF
ENGLANDER SPRING BED COMPANY, INC.

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

Docket 2602. Complaint, Oct. 30, 1935—Decision, Dec. 14, 1937

Where a corporation engaged in manufacture, sale, and distribution of bed mattresses to purchasers in other States and in the District of Columbia, in substantial competition with those similarly engaged, including those who do not misrepresent the regular and customary retail price of their respective products and do not use the below set forth methods in sale and distribution thereof in commerce; in pursuance of so-called "sales stimulator plan" adopted by it—

- (a) Furnished retailers, for their use in running advertisements in local newspapers, mats bearing such statements as "Englander's Famous Regular \$39.50 PROPEREST Mattresses ½ off sale! \$19.75. We are able to buy these nationally advertised \$39.50 damask covered mattresses and bed springs at a drastic price concession," with, in some cases, figure \$29.75 as supposed regular price, and urged use of such advertisements upon retailers in connection with offer for sale of its said products;
- (b) Attached to mattresses, to which reference was made as aforesaid, label bearing such words as "Finest Quality Since 1895. PROPEREST reg. U. S. Pat. Off. \$39.50, manufactured by ENGLANDER SPRING BED CO., INC. New York, Brooklyn," or figure \$29.75 in those cases in which such figure had been made use of in aforesaid mats; and
- (c) Supplied to retailers, in further connection with its aforesaid "sales stimulator plan" and for use in their showrooms in connection with offer and sale of its aforesaid mattresses, variously labeled as above set forth, embossed advertising cards displaying illustrations of its said products, together with dealer's name, and statement in regard to regular price, as aforesaid, of such mattresses, and including, as typical, some such statement as "Never before sold for Less than \$39.50. \$22.50 All Sizes" and "Nationally advertised at \$29.75 NOW \$19.75";

Notwithstanding fact aforesaid supposed retail prices of \$39.50 or \$29.75, as above displayed in advertisements and on labels and in display advertising cards, were not the regular and customary retail prices of the mattresses thus advertised, labeled and mentioned, nor those at which it was contemplated by it that said merchandise would be sold, but were greatly in excess of retail price at which sale by retailers involved was contemplated and intended by it, such retail price was wholly fictitious, mattresses thus advertised and labeled were greatly inferior in quality and workmanship to those which regularly and customarily retail for \$39.50 and \$29.75, and regular and customary retail price at which products in question were offered and sold was \$22.50 or \$19.75, depending upon quality of particular mattress;

With result that prospective purchasers were led to believe that mattresses thus advertised and branded were products of kind and quality that regularly and customarily sell at retail for prices indicated, and that, when offered

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and sold at their aforesaid regular prices or other sum substantially less than price indicated by such fictitious price markings, contrary to the fact, they were securing a bargain, in that products in question were made to sell for a sum greatly in excess of that at which they were offered and sold, and with effect of misleading and deceiving substantial portion of purchasing public as to value, grade, quality, and price of aforesaid mattresses and causing them erroneously to believe that regular and customary retail prices thereof were greatly in excess of those at which said mattresses were regularly and customarily offered and sold, and, as a consequence of such erroneous belief, of causing substantial portion of such public to buy its said mattresses, and of thereby unfairly diverting trade in commerce involved to it from its competitors who do not misrepresent the value, grade, quality, and price of their products; to their substantial injury and to that of the public:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Lewis, Marks & Kanter, of Brooklyn, N. Y., for respondent.

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 power and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Englander Spring Bed Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to 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, Englander Spring Bed Company, Inc., is a corporation existing under and by virtue of the laws of the State of New York, but having its principal office and place of business at 3961 Lowe Avenue, Chicago, Ill., and has been and now is engaged in the manufacture of bed mattresses and the sale and distribution thereof; and in the course and conduct of its said business, has sold and distributed such bed mattresses and caused the same to be transported from the various places of business of the respondent, to wit: Chicago, Ill., Boston, Mass., and Brooklyn, N. Y.—to purchasers of such bed mattresses located in the various States of the United States other than the State or States of origin of such shipments and in the District of Columbia and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. During the course and conduct of its business the respondent, in soliciting the sale of and in selling its products in interstate commerce, has suggested and urged upon its retailer-customers the adoption of what is called a "sales stimulator" plan which consists and consisted essentially of statements and representations in advertisements that such retailers were offering the products of said respondent at greatly reduced prices; and said respondent has written and does write, in connection with the sales and distribution of its products in interstate commerce, letters in which the following statements and representations are used:

I am not offering you an untried scheme, but a definite, approved, worked-out plan that is selling thousands of mattresses for many of the country's leading dealers. I am confident that it will do for you what it is doing for others and that you will find it just the productive, yet dignified, sales stimulator you need under present conditions.

Accompanying such letter and similar letters the respondent has offered to supply and has in fact supplied and now does supply its retailer-customers with embossed advertising cards upon which appear illustrated advertisements of its products, together with the dealer's name and a statement, or statements substantially as follows:

Never before sold for
Less than \$39.50
\$22.50
All sizes

and the further statement or a statement similar thereto:

Nationally advertised
at \$29.75 NOW
\$19.75

A further custom and practice of the respondent is to manufacture, sell, and distribute in interstate commerce bed mattresses to which is attached labels bearing the following words or words similar thereto:

Finest Quality Since 1895
ENGLANDER
Properest
Reg. U. S. Pat. Off.
PRODUCTS
INNER SPRING \$29.75 MATTRESS
New York—Brooklyn—Boston—
Chicago

OR

Finest Quality Since 1895
PRINCETONIAN
 Reg. U. S. Pat. Off.
INNER SPRING MATTRESS
 Price \$39.50

ENGLANDER SPRING BED CO.
 New York, Brooklyn, Boston, Chicago

PAR. 3. The products of the respondent, the retail selling price of which is stated to be variously \$29.75 and \$39.50, are in truth and in fact offered and intended to be offered to the purchasing public by the retailers thereof at \$19.75 and \$22.50 respectively.

Respondent has initiated and encouraged such so-called "cut" retail selling price among its retail customers by advising them substantially as follows:

The mattress carried a \$39.50 resale price. You can feature it at any price you see fit from \$19.75 up.

PAR. 4. In truth and in fact the mattresses so advertised are greatly inferior in quality and workmanship to those mattresses generally available on the market at the price of \$39.50 and such mattresses of the respondent are manufactured at an average cost of \$8.53 each and are offered by the respondent to retailers for \$14.00 each. The mattresses so manufactured are actually made with the intention and the purpose of being sold at varying prices from \$19.75 up and are made in such a manner and of such material as to warrant the offering of the same at such prices to the consuming or purchasing public.

PAR. 5. The labels as above set forth remain displayed upon the mattresses as affixed thereto by the respondent throughout the channels of trade and distribution to the consuming public and are used pursuant to an intention and purpose on the part of the respondent to mislead and deceive the purchasing and consuming public as to the true value of the same or as to the regular, usual, or customary retail selling price of such mattresses.

PAR. 6. There are among the competitors of the respondent in interstate commerce various individuals, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of bed mattresses and who do not, by the affixation of labels or the circularization of letters as hereinabove set forth represent their said products to be of a value in excess of the actual value thereof, and

competitors who do not suggest to their retailer-customers fictitious and grossly marked-up prices for the purpose of deceiving the purchasing public as to the real value of said mattresses.

PAR. 7. Respondent's practice of affixing such false, fictitious, and inflated price marks to be labeled upon said mattresses has a capacity to mislead and deceive and has misled and deceived the purchasing and consuming public as to the value, grade, quality, and price of such mattresses and has the capacity and tendency to aid, enable, or cause dealers to sell such mattresses to the consuming public at prices purporting to constitute a substantial reduction in such dealers' prices, which reductions are in fact false and fictitious.

PAR. 8. Such practices have the further capacity to and do mislead and deceive members of the purchasing or consuming public into the erroneous belief that the prices at which said products are offered for sale to the consuming or purchasing public are in fact prices reduced from those set forth as the original price of such merchandise and that such purported reduction is a genuine, bona fide reduction in price by which purchasers have saved sums of money equivalent to the amount of such reduction and further that the higher price mark as contained in the labels so affixed to the mattresses represent the current, regular, or retail prices for mattresses of the particular grade and qualities offered for sale and that such mattresses so offered are higher priced mattresses being offered for sale or sold at actually greatly reduced or lowered prices.

PAR. 9. The use by respondent of such false, fictitious, and inflated price marks is unfair and tends to and does prejudice and injure the public, unfairly divert trade from, and otherwise prejudice and injure, respondent's competitors, and to that extent constitutes a substantial diversion of trade and a loss to substantial competition in interstate commerce 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.

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, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 30, 1935, issued, and on November 6, 1935, served its complaint in this proceeding upon the respondent Englander Spring Bed Co., Inc., 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 Alden S. Bradley, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, no testimony or other evidence in opposition to the allegations of the complaint having been introduced by the respondent, that 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel for the Commission and L. B. Kanter, counsel for the respondent; 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. The respondent Englander Spring Bed Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of New York, and has its principal office and place of business at Stewart and Johnson Avenues, in the city of Brooklyn, State of New York. The respondent is engaged in the manufacture, sale, and distribution of bed mattresses. It causes said mattresses, when sold, to be shipped from its place of business in the State of New York to the purchasers thereof located in various States of the United States, other than the State of New York, and in the District of Columbia, and it has for several years last past maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

Respondent is in substantial competition in said commerce with other corporations, and with firms, partnerships and individuals who are engaged in the manufacture and in the sale and distribution of bed mattresses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent in offering for sale and selling its said mattresses to retailers for resale to the ultimate users thereof, has adopted what it describes as a "sales stimulator plan." Under this so-called "sales stimulator plan" the respondent furnishes retailers with mats for use in running advertisements in local newspapers, upon which

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appear the following statement, and others of similar import and meaning:

Englander's Famous Regular \$39.50 PROPEREST
 Mattresses ½ off sale! \$19.75
 We are able to buy these nationally advertised \$39.50 damask covered mattresses and bed springs at a drastic price concession.

Retailers are urged to use these advertisements in connection with the retail offer for sale of respondent's said products. To the mattresses, to which reference is made in said advertisements, is attached a label upon which appear the following words, or words of similar import and meaning:

Finest Quality Since 1895
 PROPEREST reg. U. S. Pat. Off. \$39.50
 manufactured by
 ENGLANDER SPRING BED CO., INC.
 New York Brooklyn

In some instances, the regular retail price of the mattresses is shown in the mats supplied retailers for use in placing advertisements in local newspapers as \$29.75. In such instances, the labels affixed to the mattresses have printed thereon a price of \$29.75.

In connection with this "sales stimulator plan," the respondent supplies to retailers embossed advertising cards upon which appear illustrated advertisements of its products, together with the dealer's name, and a statement in regard to the regular price of respondent's said mattresses. The following statements are typical of those appearing on such cards:

Never before sold for
 Less than \$39.50
 \$22.50
 All sizes
 Nationally advertised
 at \$29.75 NOW
 \$19.75

These cards are supplied to retail dealers for use in their show rooms in connection with the offering for sale and sale of respondent's said mattresses, upon the labels of which is marked a price of \$39.50 or \$29.75, as the case may be.

The mats supplied by the respondent to the retailers, as above stated, were used by various retailers located throughout the United States in placing advertisements in local newspapers advertising mattresses purchased from the respondent, bearing the labels with the price marks placed thereon, as stated.

PAR. 3. The retail price of \$39.50 or \$29.75, as the case may be, as stated in the advertisements, on the labels, and in the display advertising cards by the respondent, is not the regular and customary retail price of the mattresses advertised, labeled and mentioned in the display cards, nor the retail price at which the respondent contemplated said merchandise would be sold, but is, in truth and in fact, greatly in excess of the retail price at which the respondent contemplated and intended that said mattresses would be, and were, sold by retailers. The regular and customary retail price at which said mattresses are offered for sale and sold is \$22.50 or \$19.75, depending upon the quality of the mattress. The retail price so indicated by the respondent, as aforesaid, in said advertisements, on said labels, and display cards is wholly fictitious and bears no relation to the true retail price. The mattresses so advertised and labeled are greatly inferior in quality and workmanship to mattresses which regularly and customarily retail for \$39.50 and \$29.75.

PAR. 4. The use by the respondent, as aforesaid, of said fictitious price markings in said advertisements and on said labels, and the statements made in connection therewith, leads prospective purchasers to believe that the mattresses so advertised and branded are mattresses of the kind and quality that regularly and customarily sell at retail for the prices indicated, and to believe that, when said mattresses are offered for sale and sold for \$22.50 or \$19.75, or some other sum substantially less than the retail price indicated by such fictitious price markings, they are securing a bargain in that the mattresses were manufactured to sell for a sum greatly in excess of the sum at which they are offered for sale and sold. In truth and in fact, the sums paid by purchasers, in such instances, are the regular and customary retail prices, and purchasers do not secure mattresses manufactured to sell for much greater sums.

PAR. 5. There are among the competitors of respondent other corporations, firms, and individuals engaged in the sale and distribution of mattresses in interstate commerce who do not misrepresent the regular and customary retail price of their said products and who do not use the methods used by the respondent, as hereinabove set out, in the sale and distribution of their said products in said commerce.

PAR. 6. The acts and practices of the respondent, as hereinabove, set out, have had, and do have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public as to the value, grade, quality and price of said mattresses and cause them erroneously to believe that the regular and customary retail

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prices of said mattresses are greatly in excess of those at which said mattresses are regularly and customarily offered for sale and sold, and as a result of said erroneous belief cause a substantial portion of the purchasing public to purchase respondent's said mattresses, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not misrepresent the value, grade, quality, and price of their products, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent Englander Spring Bed Co., Inc., 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 John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by L. B. Kanter, counsel for the respondent, 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 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 Englander Spring Bed Co., Inc., and its successor, or successors, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of bed mattresses in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that said mattresses retail, or were manufactured to retail, at prices in excess of the prices at which said mattresses are regularly and customarily offered for sale and sold by retailers.

2. Placing on said mattresses labels indicating retail prices in excess of the prices at which said mattresses are regularly and customarily sold by retailers.

3. Furnishing retailers with "mats" for newspaper advertisements, display placards, or other advertising matter, containing figures or words indicating or implying that the retail prices of said mattresses are in excess of the prices at which retailers regularly and customarily sell said mattresses.

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

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

Docket 3063. Complaint, Feb. 16, 1937—Decision, Dec. 14, 1937

Where a corporation engaged in transportation, sale and distribution of nursery stock, in commerce among the various States, and an individual whose name it bore and who was principal stockholder and director and controller of its sales policies and operations—

Represented that they actually grew or propagated the nursery products sold and distributed by them, and owned, operated, or controlled nurseries, farms, or properties in or on which such products were grown, through catalogs depicting views including signs placed by them by roads, walks, and driveways in near-by nurseries and identified by said signs as said individual's "Visitors Drive" or "Flower Garden," as case might be, and fruit trees, flowers, shrubs, etc., and through language featuring and emphasizing the quality and extent and abundance of the nursery products displayed along said individual's "Nursery Drive"; facts being said corporation and individual did not actually grow or propagate nursery products sold by them, said signs were placed beside roads, walks, and driveways in many near-by nurseries containing many acres of land on which nursery stock was being propagated and grown, and stock sold and distributed by them was actually grown and propagated by others on their own nursery farms and properties, and thereafter sold to them in wholesale lots;

With effect of confusing and misleading members of the purchasing public into erroneous and mistaken beliefs that they actually grew or propagated products sold by them and actually owned, operated, and controlled nursery farms or other properties on which such stock was grown or propagated for sale, and with result, as a direct consequence of such mistaken and erroneous beliefs induced by their aforesaid advertisements and representations, that a substantial portion of purchasing public bought a substantial amount of their said stock, and trade was unfairly diverted to them from competitors who do not misrepresent the source of their respective products; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Mr. Varro E. Tyler, of Nebraska City, Nebr., for respondents.

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