

IN THE MATTER OF
ABRAHAM SOHN AND BENJAMIN SOHN, DOING BUSI-
NESS AS SOHN BROS.

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

Docket 3199. Complaint, Aug. 10, 1937—Decision Feb. 16, 1938

Where two individuals engaged in the manufacture of mattresses made by them with new covers or "sheeting" or "drilling," and from cotton filling from old mattresses secured from dealers in such products, and in the sale of such mattresses, with their new covers and with appearance of new products made from materials which had never been used, to retailers at prices much lower than those of the necessarily much more costly new products with all new material, and, as thus engaged, in substantial competition with others engaged in manufacture and sale of mattresses—

Sold, as aforesaid, their new-appearing products with no labels, markings, or designations thereon, or in connection therewith, to indicate that they were in fact made from old, used, discarded, and second-hand mattresses, to retailers for resale to public without disclosure by latter of aforesaid facts;

With tendency and capacity to mislead and deceive many retailers and substantial portion of purchasing public into erroneous belief that said mattresses, made as aforesaid, were new products made from new materials, and with result, as direct consequence of such mistaken and erroneous belief, that number of the consuming public purchased considerable volume of their said products and trade was unfairly diverted to them from competitors engaged in manufacture and sale of new mattresses in commerce throughout the various States; to the substantial 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. George Foulkes for the Commission.

Mr. Charles Cohn and *Mr. Harold N. Blitstein*, of Chicago, Ill., 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 Federal Trade Commission, having reason to believe that Abraham Sohn, an individual, and Benjamin Sohn, an individual, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, 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. Respondents, Abraham Sohn and Benjamin Sohn, are individuals doing business under the name of Sohn Bros., with their principal place of business located at 1320 Roosevelt Road, Chicago, Ill. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing mattresses from old cotton and other materials which they obtain from old, used, discarded, and second-hand mattresses and from other sources and of selling the same to retailers located in the various States of the United States. Respondents cause, and have caused, said mattresses, when sold, to be transported from their place of business in Chicago to the aforesaid purchasers thereof located in the State of Illinois and to other of the aforesaid purchasers located in various other States of the United States. In the course and conduct of their business respondents are now, and have been, in substantial competition with other individuals, corporations, and firms likewise engaged in the manufacture and sale of mattresses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, described in paragraph 1 hereof, respondents have bought and still buy second-hand, old, used, and discarded mattresses, cotton and other used materials. The materials obtained from said second-hand, old, used, and discarded mattresses and the other used materials are combed with a machine and then used by respondents in the manufacture of mattresses which are covered with new covering and are sold by the respondent to retailers who resell the same to the purchasing public.

PAR. 3. The aforesaid mattresses manufactured from old, used, discarded, and second-hand materials, as described in paragraph 2 herein, have the appearance of new mattresses manufactured from materials which have never been used, and said mattresses are sold by respondents to retailers without any label, marking, or designation on or about said mattresses to indicate that they are in fact manufactured from old, used, discarded, and second-hand materials which have been made over by respondents into mattresses. Said mattresses sold to retailers by respondents are resold by such retailers to the public without disclosing the fact that such mattresses have been manufactured from old, used, discarded, and second-hand materials.

The cost to respondents of obtaining said old, used, discarded, and second-hand materials and manufacturing the same into mattresses is much less than the cost to manufacturers of manufacturing new mattresses, and respondents are thereby able to sell said mattresses at substantially lower prices than manufacturers of new mattresses can sell their products.

PAR. 4. The acts and practices of respondents, as hereinabove set forth, had and now have a tendency and capacity to, and do, induce many retail dealers and many of the purchasing public to purchase said mattresses manufactured from old, used, and discarded materials in the mistaken belief that they are purchasing new mattresses manufactured from new and unused materials. As a result, trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the manufacture and sale of mattresses and who truthfully label, mark, and designate the same. As a consequence thereof substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The above and foregoing acts, practices, and representations of respondents have been and are now all to the prejudice of the purchasing public and of respondents' competitors, as aforesaid, and have been and are now unfair methods of competition within the meaning and intent 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."

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 August 12, 1937, issued and served its complaint in this proceeding upon respondents, Abraham Sohn, an individual, and Benjamin Sohn, an individual, doing business as Sohn Bros., charging them 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 respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Charles Cohn, attorney for the respondent, Abraham Sohn, and Harold N. Blitstein, attorney for the respondent, Benjamin Sohn; 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 in the said complaint and answer thereto, testimony and other evidence, and brief in support of the allegations of the complaint, respondents having filed no briefs and no request having been made for oral argument; and the Commission having duly considered the same, and be-

ing 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. Respondents, Abraham Sohn and Benjamin Sohn, are individuals who, for some time last past have been engaged in the business of manufacturing mattresses under the trade name and style "Sohn Bros.," with their principal office and place of business located at 1320 Roosevelt Road, Chicago, Ill.

Respondents manufacture their product from material obtained from old, used, discarded, and second-hand mattresses, and from other sources. Respondents have caused said mattresses, when sold, to be transported from their place of business in Chicago to retail purchasers located in the State of Illinois and to other retail purchasers located in various other States of the United States.

In the course and conduct of their business, respondents have been in substantial competition with other mattress manufacturing concerns who are likewise engaged in the manufacture and sale of mattresses in commerce among and between various States of the United States.

PAR. 2. The larger part of respondents' business has consisted of manufacturing mattresses from old and previously used mattresses. Respondents, however are equipped to make mattresses from new materials. Respondents made new mattresses only when receiving orders for the same. New mattresses were not manufactured in quantities for the purpose of sale.

Respondents purchased old, previously used mattresses from which they obtained cotton fillings. These purchases were made from dealers in such merchandise, who make a business of collecting and selling old mattresses. Respondents purchased their old mattresses from the dealers either in the form of old mattresses or in bales of cotton obtained by the dealers from old mattresses. When the old mattresses were received by respondent at their plant, the mattresses were placed in a machine called a "picker." The "picker" operates in such a manner as to comb or separate the filling of the mattress. After the contents of the mattress have been separated, the respondents stuff the same into new mattress covers.

The mattress covers, known in the trade as "sheeting" or "drilling," and the old cotton and other materials obtained from old, previously used mattresses, are compressed by a machine in such a manner as to give the mattress form and shape.

Respondents sold the finished product to retailers, who resold the same to the purchasing public.

PAR. 3. The mattresses manufactured by respondents from old, used, discarded, and second-hand materials have the appearance of new mattresses manufactured from materials which have never been used.

All the covers, otherwise known in the trade as "sheeting" or "drilling," used by respondent in the manufacture of said mattresses, are new, and are purchased by respondent from dealers of such merchandise, and the purchasing public in buying such a mattress, unless informed by retailers, did not know that the contents of the mattress were obtained from old, previously used mattresses, since inspection by purchasers of the contents cannot be accomplished unless the covering material is cut and the contents examined. The mattresses were sold by respondents to retailers without any labels, markings or designation on or about said mattresses to indicate that they were in fact manufactured from old, used, discarded, and second-hand materials which respondents had made over into mattresses. Retailers to whom respondents sold the mattresses resold them to the public without disclosing the fact that the mattresses were manufactured from old, used, discarded, and second-hand materials.

The cost to respondents of manufacturing mattresses from old and previously used materials were substantially lower than the cost to respondents' competitors of manufacturing mattresses from new materials. Respondents purchased old cotton obtained from old and previously used mattresses at about one-half the prevailing price of new cotton. Consequently, respondents were able to, and did, sell mattresses made from old materials at a price substantially lower than the prices at which manufacturers of mattresses could sell mattresses made from new materials. Respondents sold their mattresses at prices ranging from \$2.50 to \$2.75 per mattress. New mattresses made from new materials and of the same type as respondents' mattresses, that is, in the same general cost class, were sold for about \$4.50 by respondents' competitors.

The use of new coverings, sheeting, and drilling, in the manufacture of mattresses, and the failure of respondents to properly label, tag, or otherwise indicate on the mattresses that the contents of the mattresses were old and previously used filling materials, is deceptive and leads purchasers to believe that the mattresses are new and manufactured out of new materials.

The acts and practices of respondents as hereinabove set forth had the tendency and capacity to mislead and deceive many retail dealers and a substantial portion of the purchasing public into the erroneous belief that said mattresses manufactured from old, discarded, and previously used mattress materials were new mattresses made from new materials.

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As a direct result of this mistaken and erroneous belief, a number of the consuming public purchased a considerable volume of respondents' mattresses with the result that trade has been unfairly diverted to respondents from concerns engaged in the manufacture and sale of new mattresses in interstate commerce throughout the various States of the United States.

As a result thereof, substantial injury has been done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, Abraham Sohn and Benjamin Sohn, individuals doing business as Sohn Bros., are to the prejudice of the public and of respondents' 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 respondents, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondents having filed no brief and no request having been made for oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents, Abraham Sohn and Benjamin Sohn, individuals doing business as Sohn Brothers, or under any other trade name, their representatives, agents, employees, successors, or assigns, in connection with the offering for sale, sale, and distribution of mattresses in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, through failure to affix or attach tags or labels thereto clearly and conspicuously showing that such mattresses are composed, in whole or in part, of second-hand or used materials, or through any other means or device,

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that mattresses made from second-hand or used materials, in whole or in part, are composed of new materials.

It is further ordered, That the respondents shall within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

ELMER SUSSMAN, TRADING AS DIAMOND BROKERAGE
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3272. Complaint, Nov. 23, 1937—Decision, Feb. 16, 1938

Where an individual engaged in sale and distribution of diamonds, diamond rings, watches, and other jewelry, in commerce among the various States and in the District of Columbia; in advertising his said products through price lists, catalogs, and other advertising material published, issued, and circulated through the mails to his customers and prospective customers in the various States and in said District—

- (a) Represented that said products were composed of a grade and quality superior to grade and quality possessed by them, and their prices as being in excess of the customary retail prices at which said products usually sold, through such statements, among others of similar tenor, as "\$900.00 LADIES DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum * * * specially priced-----\$150," "\$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2 1/8 carats, exceptionally brilliant and perfect * * * now-----\$350," etc., facts being such and other articles and items of merchandise thus listed and described did not possess retail values or prices represented, or closely approximating those represented, and were not of the carat, weight, or degree of perfection thus held out;
- (b) Represented that he was liquidating a stock of merchandise secured from bankrupt sales, banks, estates, and individuals at a fraction of the original cost, through such statements as "Now liquidating a distressed stock of diamond rings at a fraction of their original cost," and "* * * the greatest diamond values ever offered in the northwest * * *," and "These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources," facts being he was not liquidating a distressed stock, as aforesaid set forth, at a fraction of the original cost of such rings, nor did his stock represent greatest value ever offered in northwest; and so-called bargains offered were not purchased from bankrupt stocks, etc., from which he obtained only an infinitesimal part of his stock, with balance purchased in usual channels from which competitors secured their merchandise;
- (c) Represented that various well-known makes of watches, "Value up to \$60. OUR PRICES \$10 to \$30," were "latest round, square or rectangular styles in yellow or white gold, 9, 15, 17, and 21 jewels," etc., and "fully guaranteed," facts being watches offered and described by him as above indicated were not newest style, as represented, but were, in most instances, second-hand and obsolete models; and
- (d) Represented, through letterheads, circulars, order blanks, and general business stationery, and through newspaper and magazine advertisements, that he was a diamond broker, facts being he was not such a broker, but merely a dealer in diamonds, diamond rings, watches and other jewelry;