

Syllabus

IN THE MATTER OF
JACOB SHERMAN, TRADING AS CHICAGO MATTRESS
COMPANY

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

Docket 3324. Complaint, Feb. 3, 1938—Decision, Feb. 16, 1939

Where an individual engaged in manufacture of mattresses, and sale and distribution thereof to purchasers in other States, in competition with others also engaged in sale and distribution of new and renovated mattresses in commerce among the various States, and including those who do not in any manner represent their said products as of a retail value or price in excess of the actual one, and place in the hands of customers mattresses bearing fictitious and grossly marked up prices, and misrepresent kind or quality of contents thereof—

- (a) Represented, designated, described, and referred to certain of his said mattresses as being composed entirely of new material, and attached and caused to be attached thereto labels reading "Official Statement. *Manufactured of New Material.* Materials Used in Filling Manufactured and Guaranteed by Chicago Mattress Co. 1500 W. Roosevelt Rd., Chicago, Ill.," and "This mattress must not be exposed for sale or sold without this label being attached under severe penalties", notwithstanding fact certain of the mattresses thus advertised, labeled, sold, and distributed by him as being composed of all new materials were actually composed in whole or in part of second-hand and used materials and not of new and unused materials; and
- (b) Attached and affixed to mattresses thus made, sold, and distributed by him in commerce as above set forth, and which were grossly inferior in quality and workmanship to such products generally available on the market at the various retail prices set forth on labels thereof, woven and printed labels and tags which represented the retail prices of such products as being substantially in excess of the actual retail value or price thereof, and substantially in excess of the retail prices at which such mattresses were customarily and regularly sold, and in substantial excess of those at which they were offered and intended to be offered to purchasing public by dealers in and retailers thereof;

With effect of misleading and deceiving purchasing and consuming public as to actual value of said products or as to regular, usual, and customary retail selling prices thereof, and with intent so to do, and result of placing in hands of unscrupulous dealers and merchants instrumentalities for deception of purchasing public, and effect of misleading and deceiving such public in aforesaid respects, and as to the grade, quality, and prices of such mattresses, and of aiding and enabling dealers to sell same to consuming public as and for new products at prices purporting to constitute substantial, but in fact false and fictitious, reductions, and with result, as consequence of such mistaken and erroneous beliefs, that number of purchasing public bought substantial volume of mattresses sold by him, and trade was unfairly diverted to him from his competitors likewise engaged in manufacture, sale, and distribution of such products, and who truthfully advertise and represent the contents and values thereof:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Rappaport & Rappaport, of Chicago, Ill., 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 powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Jacob Sherman, an individual, trading under the name and style of Chicago Mattress Co., 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 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. The respondent, Jacob Sherman, is an individual, trading under the name and style of Chicago Mattress Co., with his principal place of business located at 1500 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of mattresses, and in the sale and distribution of said product in commerce among and between the various States of the United States. He causes said mattresses, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of his business, respondent, Jacob Sherman is now, and was at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of new and renovated mattresses in commerce, among and between the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of, and in selling and distributing mattresses in commerce among and between various States of the United States for more than 3 years last past, has represented, designated, described, and referred to certain of the said mattresses as containing and being composed entirely of new material, and has attached or caused to be attached to said

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mattresses, so sold and distributed by him, labels containing the following statements and representations:

Official Statement

MANUFACTURED OF NEW MATERIAL

Materials Used in Filling

Manufactured and Guaranteed by

Chicago Mattress Co.

1500 W. Roosevelt Rd., Chicago, Ill.

KIND

SIZE

This Mattress must not be exposed for sale or sold without this Label being attached under severe penalties.

IMPORTANT!

When first unpacked this Mattress may appear smaller than ordered owing to the compact method of baling. If so, stretch to its full length and after a few nights use you will find the size correct.

In truth and in fact, respondent's mattresses so advertised, labeled, sold, and distributed by him in commerce as herein set out as being composed of all new materials, such as cotton, cotton felt, cotton rags, jute, wool, wool rags, and wool mattress ticking, are composed wholly or in part of second-hand or used materials and not of new or unused materials as represented.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, said respondent has attached and affixed to the said mattresses so manufactured, sold, and distributed in commerce as aforesaid, woven and printed labels and tags, representing the prices of such mattresses as being substantially in excess of the actual retail value or price thereof, and substantially in excess of the prices at which such mattresses are customarily and regularly sold. It is the custom and practice of said respondent to sell and distribute in commerce as herein set out bed mattresses manufactured by him to which are attached labels as follows:

Price \$19.50—Price \$19.50

Price \$19.75—Price \$19.75

Price \$24.50—Price \$24.50

Price \$27.50—Price \$27.50

Price \$39.50—Price \$39.50

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28 F. T. C.

The products of the respondent, the retail prices of which are stated to be, variously, \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, are in truth and in fact, offered and intended to be offered to the purchasing public by the dealers and retailers thereof at prices substantially less than those marked or labeled as aforesaid.

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 retail prices of \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, respectively.

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 the intention and purpose on the part of the respondent, to mislead and deceive the purchasing and consuming public as to the actual value of said mattresses, or as to the regular, usual, and customary retail selling price of such mattresses, and place in the hands of unscrupulous dealers and merchants instrumentalities for the deception of the purchasing public.

PAR. 6. There are among the competitors of respondent in commerce as herein set out various individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of bed mattresses, who do not, in any manner, represent their said products to be of a retail value or price in excess of the actual value or price thereof, and who do not place in the hands of their customers mattresses bearing fictitious and grossly marked-up prices, and who do not misrepresent the kind or quality of the contents thereof.

PAR. 7. Respondent's practices of affixing such false and fictitious price marks to his said mattresses, and of misrepresenting the kind and quality of contents thereof have the capacity and tendency to mislead and deceive, and have misled and deceived, the purchasing and consuming public as to the value, grade, quality, and prices of such mattresses, and to aid and enable dealers to sell such mattresses to the consuming public as and for new mattresses at prices purporting to constitute substantial reductions, which purported reductions are, in fact, false, and fictitious.

PAR. 8. The use by respondent of such false and fictitious labels as to contents and as to prices of his said mattresses, and of the above and foregoing misrepresentations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and statements are true. As a consequence of such mistaken and erroneous beliefs indicated as aforesaid, a number of the pur-

chasing public have purchased a substantial volume of mattresses sold by the respondent, with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of manufacturing, selling, and distributing mattresses who truthfully advertise and represent the contents and values of their products. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been and are all to the prejudice of the public and respondent's competitors, and have been and are unfair methods of competition in commerce 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 3rd day of February 1938 issued and subsequently served its complaint in this proceeding upon the respondent Jacob Sherman, an individual, trading under the name and style of Chicago Mattress Co., charging him 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, William C. Reeves, Esq., an examiner of the Commission was designated and appointed to take testimony and receive evidence in this proceeding. Pursuant thereto a hearing was held at Chicago, Ill., on November 4, 1938, at which hearing a stipulation of facts was entered into between counsel for the Commission and for the respondent, subject to the approval of the Federal Trade Commission, which stipulation of facts was read into the record, reduced to writing, and filed in the office of the Commission. Thereafter the proceeding regularly came on for hearing before the Commission upon the said complaint, the answer thereto, and said stipulation of facts, and brief in support of the allegations of the complaint (no brief having been filed on behalf of the respondent and no oral argument having been requested or made) and the Commission having duly considered the matter 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, Jacob Sherman, is an individual trading under the name and style of Chicago Mattress Co., with his principal place of business located at 1500 West Roosevelt Road in the city of Chicago, State of Illinois. Respondent is now, and for more than 3 years last past has been, engaged in the manufacture of mattresses and in the sale and distribution of said product in commerce among and between the various States of the United States. He causes said mattresses when sold to be shipped from his place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois, and maintains courses of trade in such mattresses. In the course and conduct of his business, the respondent, Jacob Sherman, is now and was at all times herein referred to in competition with other individuals, firms, partnerships, and corporations also engaged in the sale and distribution of new and renovated mattresses in commerce among and between the various States of the United States.

PAR. 2. In soliciting the sale of and in selling and distributing mattresses in commerce among and between various States of the United States, respondent has represented, designated, described, and referred to certain of the said mattresses as being composed entirely of new material and has attached and caused to be attached to said mattresses so sold and distributed by him labels containing the following statements and representations:

Official Statement
Manufactured of New Material
Materials Used in Filling
Manufactured and Guaranteed by
Chicago Mattress Co.
1500 W. Roosevelt Rd., Chicago, Ill.

This mattress must not be exposed for sale or sold without this label being attached under severe penalties.

The Commission finds that, in truth and in fact, certain of the mattresses so advertised, labeled, sold, and distributed by respondent in commerce, as herein set-out as being composed of all new materials, were actually composed wholly or in part of second-hand and used materials and not of new and unused materials. A sample of the filling in one of respondent's mattresses was removed from a mattress which had been shipped by respondent from his place of business in Chicago, Ill., to a retailer customer of respondent in Minneapolis, Minn., and which had on it a label stating that said mattress was made of new material. Said sample was tested by the

Bedding and Upholstery Section of the Department of Labor and Industry of the State of Pennsylvania, and was found to consist of new excelsior and second-hand cotton linters.

A sample of the filling in one of respondent's mattresses was removed from a mattress manufactured by respondent and found in his place of business in Chicago, Ill., and which had on it a label stating that it was made of new material. Said sample was tested by the National Bureau of Standards and found to contain second-hand cotton.

PAR. 3. In the course and conduct of his business as described in paragraph 1, said respondent has attached and affixed to the said mattresses so manufactured, sold, and distributed in commerce, as aforesaid, woven and printed labels and tags representing the retail prices of such mattresses as being substantially in excess of the actual retail value or price thereof and substantially in excess of the retail prices at which such mattresses are customarily and regularly sold. It is the custom and practice of said respondent to sell and distribute in commerce as herein set-out bed mattresses manufactured by him to which are attached labels as follows:

Price \$19.50

Price \$19.75

Price \$24.50

Price \$27.50

Price \$39.50

The products of the respondent, the retail prices of which are stated to be, variously, \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50, are in truth and in fact offered and intended to be offered to the purchasing public by the dealers and retailers thereof at prices substantially less than those marked or labeled as aforesaid.

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 retail prices of \$19.50, \$19.75, \$24.50, \$27.50, and \$39.50 respectively.

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 the intention and purpose on the part of the respondent to mislead and deceive the purchasing and consuming public as to the actual value of said mattresses or as to the regular, usual, and customary retail selling price of such mattresses, and place in the hands of unscrupulous dealers and merchants instrumentalities for the deception of the purchasing public.

PAR. 6. There are among the competitors of respondent in commerce as herein set-out, various individuals, firms, partnerships, and corporations engaged in the manufacture and sale and distribution of bed mattresses who do not in any manner represent their said products to be of a retail value or price in excess of the actual value or price thereof, and who do not place in the hands of their customers mattresses bearing fictitious and grossly marked-up prices and who do not misrepresent the kind or quality of the contents thereof.

PAR. 7. Respondent's practices of affixing such false and fictitious price marks to his said mattresses and of representing the kind and quality of contents thereof have the capacity and tendency to mislead and deceive and have misled and deceived the purchasing and consuming public as to the value, grade, quality, and prices of such mattresses, and to aid and enable dealers to sell such mattresses to the consuming public as and for new mattresses at prices purporting to constitute substantial reductions, which purported reductions are in fact false and fictitious.

PAR. 8. The use by respondent of such false and fictitious labels as to contents and as to prices of his said mattresses and of the above and foregoing misrepresentations has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations and statements are true. As a consequence of such mistaken and erroneous beliefs indicated as aforesaid, a number of the purchasing public have purchased a substantial volume of mattresses sold by the respondent, with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of manufacturing, selling, and distributing mattresses who truthfully advertise and represent the contents and values of their products.

CONCLUSION

The above and foregoing acts, practices and representations of the respondent have been and are all to the prejudice and injury of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the meaning and intent of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation of facts and other evidence taken before

William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief of counsel for the Commission filed herein, no brief having been filed on behalf of the respondent, and no oral arguments having been requested or made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Jacob Sherman, individually, trading under the name and style of Chicago Mattress Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses in commerce among and between the various States of the United States and in the District of Columbia, cease and desist from:

1. Representing, directly or through failure to affix or attach tags or labels thereto clearly and conspicuously showing that such mattresses are composed, in whole or in part, as the case may be, of second-hand and used materials, or through any other means or device, that mattresses made from second-hand and used materials in whole or in part, are new or are composed of new materials.

2. Representing, as the customary or regular retail prices for such mattresses, prices which are in fact fictitious and greatly in excess of the prices at which said mattresses are regularly and customarily offered for sale and sold at retail.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order.

IN THE MATTER OF
HILD FLOOR MACHINE COMPANY

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

Docket 3356. Complaint, Mar. 12, 1938—Decision, Feb. 16, 1939

Where a corporation engaged in assembling, selling, and distributing rug and carpet cleaning machines which operated through rotating action of a motor-driven brush, applying on rug or carpet shampoo solution fed to it from tank on machine, and in selling its said machines and devices to purchasers in other States and in the District of Columbia, in substantial competition with those likewise engaged in sale and distribution of carpet and rug cleaning machines and other similar devices in commerce and in said District; in soliciting sale of its said machines and devices in newspapers, magazines, pamphlets, circulars, letters, and other forms of advertising having interstate circulation, and in its booklet entitled "How to Make Money Cleaning Rugs and Carpets the Hild Way," distributed in large numbers to the public generally throughout the various States and in the District through its distributors, sales branches, and sales persons—

- (a) Represented that its said carpet and rug cleaning equipment, costing less than \$400, cleaned carpets and rugs without removal from floor as well as or better than the more expensive installations of cleaning equipment, costing as much as \$30,000, and usually installed and used in plants especially equipped for the cleaning of carpets and rugs after removal from floor;
- (b) Represented that only with its system could the dirtiest tacked-down rugs and carpets be flawlessly shampooed and cleaned, and that nothing remained in rug or carpet that needed rinsing out; and
- (c) Represented that its rug shampoo employed in operation and functioning of said equipment was highly volatile and evaporated completely, and that grease and grime evaporated with it;

Facts being its said machine and device did not, as claimed, do work of cleansing rugs and carpets as well as or better than the more expensive installations as above set forth, its said machine and device did not clean dirtiest tacked-down carpets and rugs flawlessly, nor remove all grime and grease from rugs and carpets without rinsing, and said shampoo did not evaporate completely from such rugs or carpets and leave them free from grease and grime, with nothing needing rinsing out;

With effect of confusing, misleading, and deceiving purchasing public into mistaken and erroneous belief that its said machine and device and shampoo fluid possessed properties claimed and would accomplish results thus represented, and without removal of rugs and carpets, and that they would accomplish such results as well as or better than more expensive installations used in plants especially equipped for such cleaning after removal from floor; and with capacity and tendency to induce members of purchasing public to buy and use its said products because of aforesaid erroneous beliefs thus engendered, and with result of placing in hands of others means and instrumentality whereby they might misrepresent to