

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1939, TO NOVEMBER 30, 1939

IN THE MATTER OF

E. E. PHILLIPS, TRADING AS COTTON BELT 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 3781. Complaint, May 2, 1939—Decision, June 3, 1939

Where an individual engaged in manufacture, sale, and distribution of mattresses and bedding to purchasers at their respective points of location in other States—

- (a) Represented through such statements on labels and advertising as "All Layer Felt" and "100% Layer Felt—Staple Cotton" that certain of his mattresses were made of all layer felt and that other of his said products were 100 percent layer felt and made of staple cotton, notwithstanding fact that said products thus referred to were not all layer felt as long understood from word felt, used in connection with such products, in the mattress trade, by wholesalers and retailers selling and distributing mattresses, and by members of purchasing public as meaning product made of fibers of cotton or wool which had been garnetted together into a mat or web and were not, in case of others thus designated, made of staple cotton considered as above set forth as meaning full length fiber cotton; and
- (b) Represented through such statements on labels and in advertising matter as "Felt-Plated—Cleaned Cotton Motes" and "Felt-Plated—Washed Cotton" that certain of his mattresses were felt-plated and made of or filled with cleaned cotton motes, and that other of his mattresses were felt-plated and made of or filled with washed cotton, notwithstanding fact that said products thus referred to were not felt-plated or constructed with layer of felt on top and on underside of mattress and covered with ticking, as understood as above set forth, or made of or filled with cleaned cotton motes or waste cotton or cotton fragments, as understood as above described, and were not made of or filled with washed cotton;

With effect of misleading and deceiving substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true and into purchase, by reason of such erroneous and mistaken belief, of his said products:

Held, That such acts and practices, as above set forth, were all to the injury and prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. L. E. Creel, Jr. for the Commission.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that E. E. Phillips, an individual trading as Cotton Belt Mattress Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the 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 E. E. Phillips is an individual trading as Cotton Belt Mattress Co. and having his office and principal place of business located in the town of Pinetops, State of North Carolina. Respondent is now, and has been for more than 1 year last past, engaged in the business of the manufacture, sale, and distribution of mattresses and bedding. Respondent sells and distributes said merchandise to wholesalers, retailers and other purchasers thereof. In the course and conduct of his business as aforesaid the respondent causes said merchandise, when sold, to be transported from his aforesaid place of business in the State of North Carolina to the purchasers thereof at their respective points of location in various States of the United States, other than the State of North Carolina, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business the respondent has been, and is now, engaged in the practice of falsely representing the constituent fiber and material of his said mattresses by means of false and misleading statements and representations placed by respondent on labels attached to said products and used in various other advertising matter, all of which are distributed in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the statements and representations, disseminated as aforesaid, are the following:

ALL LAYER FELT
100% LAYER FELT—STAPLE COTTON
FELT-PLATED—CLEANED COTTON MOTES
FELT-PLATED—WASHED COTTON

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondent represents to prospective purchasers situated in vari-

ous States of the United States and in the District of Columbia that certain of his mattresses are made of all layer felt, that other of his mattresses are 100 percent layer felt and are made of staple cotton, that other of his mattresses are felt-plated and are made of or filled with cleaned cotton notes, and that other of his mattresses are felt-plated and are made of or filled with washed cotton.

PAR. 3. The aforesaid statements and representations by the respondent, used and disseminated as aforesaid, are grossly exaggerated, false and misleading.

The word "felt," when used in connection with mattresses, has been for many years, and is now, considered in the mattress trade, by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of fibers of cotton or wool which have been garnetted together into a mat or web. The term "staple cotton" is considered, as aforesaid, to mean full length fiber cotton. The term "cotton notes" is considered, as aforesaid, to mean waste cotton or cotton fragments. The term "felt-plated," when used as descriptive of a mattress, is considered, as aforesaid, to mean that the mattress has a layer of felt on its top and also on its underside and is covered with ticking.

In truth and in fact the mattresses which the respondent represents as aforesaid as being "All Layer Felt" are not all layer felt. The mattresses which the respondent represents as aforesaid as being "100% Layer Felt—Staple Cotton" are not 100 percent layer felt and are not made of staple cotton. The mattresses which the respondent represents as aforesaid as being "Felt-Plated—Cleaned Cotton Notes" are not felt-plated and are not made of or filled with cleaned cotton notes. The mattresses which the respondent represents as aforesaid as being "felt-plated—washed cotton" are not felt-plated and are not made of or filled with washed cotton.

PAR. 4. The use by the respondent of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of respondent's products because of said erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 2, 1939, issued and thereafter served its complaint in this proceeding upon respondent, E. E. Phillips, individually and trading as Cotton Belt Mattress Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 10, 1939, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondent E. E. Phillips is an individual trading as Cotton Belt Mattress Co. and having his office and principal place of business located in the town of Pinetops, State of North Carolina. Respondent is now, and has been for more than 1 year last past, engaged in the business of the manufacture, sale, and distribution of mattresses and bedding. Respondent sells and distributes said merchandise to wholesalers, retailers and other purchasers thereof. In the course and conduct of his business as aforesaid the respondent causes said merchandise, when sold, to be transported from his aforesaid place of business in the State of North Carolina to the purchasers thereof at their respective points of location in various States of the United States other than the State of North Carolina, and at all times mentioned herein has maintained a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business the respondent has been, and is now, engaged in the practice of falsely representing the constituent fiber and material of his said mattresses by means of false and misleading statements and representations placed by respondent on labels attached to said products and used in various other advertising matter. Among and typical of the statements and representations disseminated as aforesaid, are the following:

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Findings

ALL LAYER FELT

100% LAYER FELT—STAPLE COTTON

FELT-PLATED—CLEANED COTTON MOTES

FELT-PLATED—WASHED COTTON

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondent represents to prospective purchasers situated in various States of the United States and in the District of Columbia that certain of his mattresses are made of all layer felt, that other of his mattresses are 100% layer felt and are made of staple cotton, that other of his mattresses are felt-plated and are made of or filled with cleaned cotton motes, and that other of his mattresses are felt-plated and are made of or filled with washed cotton.

PAR. 3. The aforesaid statements and representations by the respondent, used and disseminated as aforesaid, are grossly exaggerated, false and misleading.

The word "felt," when used in connection with mattresses, has been for many years, and is now, considered in the mattress trade, by wholesalers and retailers selling and distributing mattresses and by members of the purchasing public to mean a product made of fibers of cotton or wool which have been garnetted together into a mat or web. The term "staple cotton" is considered, as aforesaid, to mean full length fiber cotton. The term "cotton motes" is considered, as aforesaid, to mean waste cotton or cotton fragments. The term "felt-plated," when used as descriptive of a mattress, is considered, as aforesaid, to mean that the mattress has a layer of felt on its top and also on its underside and is covered with ticking.

In truth and in fact the mattresses which the respondent represents as aforesaid as being "All Layer Felt" are not all layer felt. The mattresses which the respondent represents as aforesaid as being "100% Layer Felt—Staple Cotton" are not 100 percent layer felt and are not made of staple cotton. The mattresses which the respondent represents as aforesaid as being "Felt-Plated—Cleaned Cotton Motes" are not felt-plated and are not made of or filled with cleaned cotton motes. The mattresses which the respondent represents as aforesaid as being "felt-plated—washed cotton" are not felt-plated and are not made of or filled with washed cotton.

PAR. 4. The use by the respondent of the aforesaid false and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations

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are true, and into the purchase of respondent's products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning 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 and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, E. E. Phillips, individually and trading as Cotton Belt Mattress Co., or under any other name or names, 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, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "felt" alone or in conjunction with any other term or terms to designate, describe, or refer to any mattress, or part thereof, which is not made of fibers of cotton or wool garnetted together into a mat or web.

2. Using the term "staple cotton" or any other term or terms of similar import or meaning to designate, describe, or refer to any product which is not full length fiber cotton.

3. Representing that such mattresses are made of or filled with cleaned cotton motes or washed cotton unless and until such is the fact.

4. Representing that respondent's mattresses are felt-plated unless said mattresses have a layer of felt on their top and also on their underside.

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 this order.

Complaint

IN THE MATTER OF
LEWYN DRUG, INCORPORATEDCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2934. Complaint, Mar. 9, 1939¹—Decision, June 6, 1939²*

Where a corporation engaged in sale of medicinal preparations designed for treatment of unnatural delayed menstruation, and known as "Dr. Haller's Prescription 5000" and "Dr. Haller's Prescription 2000," to purchasers in other States and in the District of Columbia; in advertisements which it disseminated through the mails and through newspapers and periodicals of general circulation, and which were calculated and intended to induce purchase of said preparations—

Made such statements and representations as "In Europe women are not distressed about abnormal unnatural periodic delay—they use Dr. Haller's famous prescriptions," "Works like magic—women say," "I believe it is the only successful treatment on the market," "Physicians recommend Dr. Haller's prescriptions," and "You can trust us because we have satisfactorily served women for over fifty years";

Facts being such representations were false, misleading and untrue, said preparation was not a competent, safe nor scientific treatment for aforesaid purpose, nor recommended by physicians, and advertisements in question were also false in failing to reveal that use of preparations in question, under conditions prescribed and under such conditions as are customary and usual, might result in serious illness and, in some cases, in death of user;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such erroneous and mistaken belief, to purchase its said medicinal preparations, with injurious drugs therein contained:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Charles P. Vicini* and *Mr. William C. Reeves*, trial examiners.

Mr. Reuben J. Martin for the Commission.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal

¹ Amended and supplemental.

² Prior cease and desist order made as of November 6, 1937, and reported in 25 F. T. C. 1348 was vacated, and case remanded for the taking of further testimony on behalf of Commission and on behalf of respondent, by order made as of November 10, 1938, and reported in 27 F. T. C. 1483.