

Complaint

IN THE MATTER OF

WEISS BEDDING COMPANY, INC., AND DAN WEISS, JR.

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

Docket 3809. Complaint, June 6, 1939—Decision, Aug. 2, 1939

Where a corporation and an individual, who was president thereof and formulated, controlled, and directed its sales policies and practices, engaged in manufacture, sale, and distribution of mattresses, and acting in cooperation with each other in doing below described acts and things—

Falsely represented constituent fiber and material of their said mattresses, through means of false and misleading statements and representations placed by them on labels attached thereto, and thus, through various other advertising matter and through such statements and representations, among others disseminated, as "This mattress contains 100% cotton felt," "All new and sanitary," and "Complies with all State laws," represented to prospective purchasers that certain of their mattresses were 100 percent cotton felt, and that material therein was all new and sanitary, and that they complied with all State laws;

Facts being they did not contain 100 percent "cotton felt," or product, as understood from said words in mattress trade by wholesalers and retailers selling and distributing such products and by members of purchasing public, made of cotton fibers which had been garnetted together into a mat or web, material contained therein was not all new and sanitary, and said products did not comply with all State laws;

With effect of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and of causing members of said public to buy their said products because of such erroneous and mistaken belief:

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

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

Mr. Grover G. Sales, of Louisville, Ky., for respondents.

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 Weiss Bedding Co., Inc., a corporation, and Dan Weiss, Jr., an individual, hereinafter referred to as respondents, have 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:

Complaint

29 F. T. C.

PARAGRAPH 1. Respondent Weiss Bedding Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with its principal place of business located at 365 Baxter Avenue, in the city of Louisville, State of Kentucky. Respondent Dan Weiss, Jr., whose address is also 365 Baxter Avenue, Louisville, Ky., is an individual and is president of Weiss Bedding Co., Inc., and formulates, controls, and directs its sales policies and practices. Said respondents act together in cooperation with each other in doing the acts and things hereinafter alleged.

Respondents are now, and have been for more than 1 year last past, engaged in the business of the manufacture, sale, and distribution of mattresses. Respondents sell and distribute said merchandise to wholesalers, retailers, and other purchasers thereof. In the course and conduct of their business as aforesaid the respondents cause said merchandise, when sold, to be transported from their aforesaid place of business in the State of Kentucky to the purchasers thereof at their respective points of location in various States of the United States other than Kentucky, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 said business, the respondents have been, and are now, engaged in the practice of falsely representing the constituent fiber and material of their said mattresses by means of false and misleading statements and representations placed by respondents on labels attached to said products and also used by respondents in various other advertising matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid are the following:

This mattress contains 100% cotton felt.

All new and sanitary.

Complies with all State laws.

Through the use of such statements and representations, together with other statements of similar import and meaning not herein set out, respondents represent to prospective purchasers situated in various States of the United States and in the District of Columbia, that certain of their mattresses are 100 percent cotton felt, that the material in said mattresses is all new and sanitary, and that said mattresses comply with all State laws.

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

The term "cotton 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 cotton fibers which have been garnetted together into a mat or web.

In truth and in fact the aforesaid mattresses do not contain 100 percent cotton felt and the material contained in said mattresses is not all new and sanitary. Said mattresses do not comply with all State laws.

PAR. 4. The use by the respondents 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 causes said members of the purchasing public to purchase respondents' products because of said erroneous and mistaken belief.

PAR. 5. The aforesaid acts and practices of the respondents, 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 June 6, 1939, issued and thereafter served its complaint in this proceeding upon respondents Weiss Bedding Co., Inc., a corporation and Dan Weiss, Jr., an individual and president of Weiss Bedding Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 24, 1939, the respondents filed their answer in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on 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

29 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Weiss Bedding Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with its principal place of business located at 365 Baxter Avenue, in the city of Louisville, State of Kentucky. Respondent Dan Weiss, Jr., whose address is also 365 Baxter Avenue, Louisville, Ky., is an individual and is president of Weiss Bedding Co., Inc., and formulates, controls and directs its sales policies and practices. Said respondents act together in cooperation with each other in doing the acts and things hereinafter described.

Respondents have been for more than 1 year last past engaged in the business of the manufacture, sale, and distribution of mattresses. Respondents sell and distribute said merchandise to wholesalers, retailers, and other purchasers thereof. In the course and conduct of their business as aforesaid the respondents cause said merchandise, when sold, to be transported from their aforesaid place of business in the State of Kentucky to the purchasers thereof at their respective points of location in various States of the United States other than Kentucky, and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise 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 said business, the respondents, subsequent to March 21, 1938, and prior to August 1938, engaged in the practice of falsely representing the constituent fiber and material of their said mattresses by means of false and misleading statements and representations placed by respondents on labels attached to said products and also used by respondents in various other advertising matter, all of which were distributed in commerce among and between the various States of the United States and in the District of Columbia. Among and typical of the statements and representations disseminated as aforesaid are the following:

This mattress contains 100% cotton felt.

All new and sanitary.

Complies with all State laws.

Through the use of such statements and representations together with other statements of similar import and meaning not herein set out, respondents represented to prospective purchasers situated in various States of the United States and in the District of Columbia, that certain of their mattresses were 100 percent cotton felt, that the material in said mattresses was all new and sanitary, and that said mattresses complied with all State laws.

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

The term "cotton 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 cotton fibers which have been garnetted together into a mat or web.

In truth and in fact the aforesaid mattresses did not contain 100-percent cotton felt and the material contained in said mattresses was not all new and sanitary. Said mattresses did not comply with all State laws.

PAR. 4. The use by the respondents of the aforesaid false and misleading statements and representations had the capacity and tendency to, and did, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true, and caused said members of the purchasing public to purchase respondents' products because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is Ordered, That the respondent, Weiss Bedding Co., Inc., a corporation, its officers, and respondent Dan Weiss, Jr., individually and as an officer of Weiss Bedding Co., their 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:

Order

29 F. T. C.

1. Using the term "cotton felt" or any other term or terms of similar import and meaning 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 cotton fibers garnetted together into a mat or web.

2. Representing that such mattresses are new or sanitary unless all materials made a part of such mattresses are new or sanitary.

3. Representing that such mattresses comply with all State laws unless and until such mattresses conform with the standards fixed by laws of all the States of the United States of America.

It is further ordered, That the respondents shall, within 60 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
T. NOONAN & SONS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3640. Complaint, Oct. 28, 1938—Decision, Aug. 3, 1939*

Where a corporation engaged in the manufacture, sale and distribution of its "Noonan's Vitamin F Scalp Cream" to members of purchasing public in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of preparations and products designed and intended for treatment, relief, and remedy of the conditions for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their preparations and products or their therapeutic properties, and who do not make any false statements in connection with sale and distribution thereof; in advertisements which it disseminated or caused to be disseminated in commerce, through the mail and otherwise, and which were intended and calculated to induce purchase of its said preparation—

- (a) Represented directly and through implication that dandruff and itching scalp were usual cause of baldness in the man and impairment in texture or color of the hair in the woman, and that said preparation would permanently eradicate dandruff and itching scalp and invigorate the roots of the hair and prevent the natural oil of the scalp from being lost, and the hair from falling out and would avert baldness and promote growth of new hair and restore unhealthy hair to health; and
- (b) Represented that "Vitamin F" was essential to a healthy hair or skin and that conditions and ailments of the scalp and hair mentioned, including baldness, were consequences of a dietary deficiency in a so-called "Vitamin F" and that the claimed results from the use of its said product, including stimulation of new hair growth, were induced by presence therein of said vitamin in therapeutically significant quantities and that a majority of the medical and biochemical professions had generally accorded a recognition of the existence, identity, and composition of a certain essentially nutritive factor claimed to be present in its product and called "Vitamin F," such as that accorded by said professions to other such factors and their appellations;

Facts being dandruff and itching scalp are not in all cases cause of baldness nor loss of life and color of the hair as above set forth, use of said product would not permanently eradicate either of aforesaid conditions, any appearance of softness in the texture of the scalp or of restored lustre, beauty, life, and flexibility which it might impart to lifeless, dry, stringy, or brittle hair was but transitory, and it would not invigorate the roots of the hair or accomplish the other results above claimed, and there was no essential nutrition factor generally recognized and characterized by a majority of the medical or biochemical professions as "Vitamin F," and ordinary diet of Americans was such that there was little likelihood of any deficiency in any dietary factor, lack of which might have an adverse effect upon the scalp or hair;