

IN THE MATTER OF

CHESTER L. THOMAS, TRADING AS THOMAS QUILT
FACTORIES

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

Docket 3375. Complaint, Apr. 9, 1938—Decision, Feb. 23, 1940

Where an individual engaged in manufacture, sale, and distribution of quilts, bed pads, and similar products, to purchasers in various States and in the District of Columbia; in advertisements of his said quilts by mail, newspapers, advertising folders, pamphlets, circulars, letters and other literature published and circulated to purchasers and prospective purchasers throughout the United States, and through agents personally soliciting orders—

Represented that his Thomas Feather-Quilts usually retailed at \$37.50, and that quoted price of \$18.75 was introductory and special, limited as to time, and one-half of customary selling price therefor, and that quilts in question were of a value of \$37.50, specially offered as aforesaid, through such statements as "Save 50%. Introductory Half Price Offer * * * During the next 5 days you and your friends may reserve the right to purchase two famous Thomas Feather-Quilts for the usual price of one! * * *" and "'Factory irregular' Thomas Feather-Quilt only \$20.00 (or two for \$37.50) * * * Identical in every way to the first quality * * * originally retailed for \$37.50 * * * YOU SAVE OVER \$17.50 PER QUILT * * *, and "Hurry! Save one-half Regular Retail Price by mailing This Card AT ONCE. This special offer is Limited * * * During the next few days only * * * Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise," and others of similar tenor, facts being said price of \$18.75 was neither reduced, special nor introductory, nor limited as to time, but customary one at which said quilts were sold by him in usual and regular course of business at all times;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of his said products and trade was diverted unfairly to him from competitors engaged in sale and distribution of said and similar goods:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted an unfair method of competition.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Carrel F. Rhodes for the Commission.

Mr. J. Frederick Schneider, of Denver, Colo., for respondent.

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 Chester L. Thomas, individually, and trading as Thomas Quilt Factories, hereinafter referred to as respondent, has violated the provisions of 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, Chester L. Thomas, is an individual operating and doing business under the trade name, Thomas Quilt Factories, with his principal office and place of business located at 1040 Acoma Street, Denver, Colo.

PAR. 2. Respondent, Chester L. Thomas, has been for more than 1 year last past, and is now, engaged in the business of manufacturing, advertising, selling, and distributing quilts under the name of Thomas Feather-Quilts. Said respondent now causes, and for more than 1 year last past has caused, his said products to be sold by agents and through various advertising mediums. He has caused the same, when sold, to be transported from his principal place of business in Denver, Colo., to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Colorado and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said quilts so sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of his said business respondent is now, and has been, in competition with other individuals, partnerships, and corporations likewise engaged in the business of selling and distributing quilts and other similar products intended and used for the same purpose for which respondent's said quilts are used in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of the commodities offered for sale by him, has circulated to purchasers and prospective customers throughout the United States, by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements concern-

Complaint

30 F. T. C.

ing the nature, value and quality of the various products sold by him. Among such statements and representations the following are typical examples:

Save 50%

Introductory Half Price Offer on "World's Warmest" Thomas Feather-Quilts!

During the next 5 days you and your friends may reserve the right to purchase two famous Thomas Feather-Quilts for the usual price of one! * * *

You can now take advantage of "double economy!"

Save half the original cost * * *

Recently designed by well known sleep specialists.

The beautiful Thomas Quilt treats you to an entirely new kind of rest.

1 price — 5 DAYS ONLY — 1
2 sale — Save One-Half — 2

Save by Ordering During our Special Sale—Have Delivery Made Later if Desired * * *

Thomas Feather-Quilts * * *

"Factory Irregular" Thomas Feather-Quilt only \$20.00 (or two for \$37.50)
* * *

Identical in every way to the first quality Thomas Feather-Quilt originally retailed for \$37.50 * * *

YOU SAVE OVER \$17.50 PER QUILT * * *

A pictorial representation of two ladies, seated in conversation, together with the following statement:

Did you say two for one?

Limited Half price offer on genuine Thomas Feather-Quilts!

* * * During the next 5 days you and other quality minded residents of this city may reserve the right to purchase two genuine Thomas Feather-Quilts for the price of one * * *

THE FAMOUS AND ORIGINAL THOMAS FEATHER-QUILTS.

Hurry! Save One-Half Regular Retail Price by Mailing This Card AT ONCE. This special offer is Limited. The World's warmest, newest, most healthful sleeping companion—the Famous Thomas FETH-R-ET! During the next few days only, you may reserve the right to participate in a special half-price sale soon to be conducted in your community. Count yourself in on our unusual offer and secure further details by mailing this postage-free, "option" card

TODAY * * *

Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise.

The aforesaid statements and representations, together with other similar statements and representations not herein set out in full, purport to be descriptive of respondent's various products and also serve as representations on the part of the respondent to members of the purchasing public that said Thomas Feather-Quilts were designed by specialists and are recommended by doctors and other specialists; that \$37.50 is the usual, regular and customary retail price for Thomas

Feather-Quilts; that the quoted price of \$18.75 is an introductory or other special price limited as to time and is one-half of the usual, regular, and customary selling price therefor; and that the so-called factory irregular quilts sold at \$20 or two for \$37.50 are identical in every way to the first-quality Thomas Feather-Quilts having a usual, regular, and customary selling price of \$37.50 each.

PAR. 4. In truth and in fact, the statements and representations hereinabove set out are deceptive, false, and misleading. Respondent's quilts are not designed and recommended by doctors or other specialists. Said quilts have never had the usual, regular, and customary retail sales price of \$37.50. The purported introductory or other special reduced price is not in fact a reduced introductory price or a specially reduced price for a limited period of time. The prices quoted as alleged introductory or other special prices and having an alleged limited period of time are in fact the usual, regular, and customary retail selling price of said quilts at all times, and respondent has regularly and customarily sold said quilts to all purchasers for a period of several years at such prices. The so-called factory irregulars sold at \$20 or two for \$37.50 are not identical in quality to the Thomas Feather-Quilts alleged to be ordinarily and customarily retailed for \$37.50 each.

PAR. 5. The use by the respondent of the aforesaid deceptive, misleading, and false representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and that respondent's products have the qualities, values, and prices represented, and into the purchase of respondent's quilts in and on account of such erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade is diverted unfairly to respondent from competitors likewise engaged in selling quilts and other similar products intended and used for the same purposes in commerce among and between the various States of the United States who do not misrepresent the nature, value, quality, or prices of their respective products. As a consequence thereof injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above alleged acts and practices of respondent are all 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 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 the 9th day of April 1938, issued its complaint and caused same to be served upon the respondent, Chester L. Thomas, individually, and trading as Thomas Quilt Factories, 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, testimony and other evidence in support of the allegations of the complaint and in opposition thereto, were introduced before examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint and brief in opposition thereto, oral argument not having been requested, 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, Chester L. Thomas, is an individual, operating under the trade name Thomas Quilt Factories, with his office and principal place of business in Denver, Colo. The respondent is engaged in the manufacture, sale, and distribution of quilts, bed pads, and similar products. Respondent causes said products, when sold, to be transported by express and otherwise from his place of business in Denver, Colo. to purchasers thereof, some located in the State of Colorado and others located in various other States of the United States and in the District of Columbia. There is now and has been for some time last past a course of trade in commerce by said respondent, in said products, between and among various States of the United States and in the District of Columbia. In the course and conduct of said business, the respondent is in competition with other individuals, firms, and corporations also engaged in the sale and distribution of quilts, bed pads, and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and in the distribution of his products, as described in paragraph 1 hereof, respondent, for the purpose of inducing the purchase of the commodities

offered for sale by him, has published and circulated to purchasers and prospective customers throughout the United States by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters and other literature, and through agents personally soliciting orders the following and other similar statements and representations:

Save 50%

Introductory Half Price Offer on "World's Warmest" Thomas Feather-Quilts! During the next 5 days you and your friends may reserve the right to purchase TWO famous Thomas Feather-Quilts for the usual price of one! * * *

You can now take advantage of "double economy." Save half the original cost * * * Recently designed by well known sleep specialists. The beautiful Thomas Quilt treats you to an entirely new kind of rest.

$\frac{1}{2}$ price—5 DAYS ONLY— $\frac{1}{2}$

sale—Save One-Half

Save by Ordering During our Special Sale—Have Delivery Made Later if Desired * * * Thomas Feather-Quilts * * *

"Factory irregular" Thomas Feather-Quilt only \$20.00 (or two for \$37.50) * * * Identical in every way to the first quality Thomas Feather-Quilt originally retailed for \$37.50 * * *

YOU SAVE OVER \$17.50 PER QUILT * * *

A pictorial representation of two ladies seated in conversation, together with the following statement:

Did you say two or one?

Limited Half price offer on genuine Thomas Feather-Quilts! * * * During the next 5 days you and other quality minded residents of this city may reserve the right to purchase two genuine Thomas Feather-Quilts for the price of one * * * THE FAMOUS AND ORIGINAL THOMAS FEATHER-QUILTS.

Hurry! Save one-half Regular Retail Price by mailing This Card At ONCE. This special offer is Limited. The World's warmest, newest, most healthful sleeping companion—the Famous Thomas FETH-B-ET! During the next few days only, you may reserve the right to participate in a special half-price sale soon to be conducted in your community. Count yourself in on our unusual offer and secure further details by mailing this postage-free, 'option' card TODAY * * * Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise.

PAR. 3. The statements and representations to the effect that the Thomas Feather-Quilts usually, regularly and customarily retail for \$37.50 and that the quoted price of \$18.75 is an introductory or other special price, limited as to time, and is one-half of the usual, regular, and customary selling price therefor, combined with inferences drawn therefrom, serve as representations that the quilts are of a value of \$37.50 and that \$18.75 is an introductory or special price limited as to time and is one-half the usual, regular, and customary price of said products.

Order

30 F. T. C.

PAR. 4. Respondent does not sell his said quilts for \$37.50 but the price of said quilts is only \$18.75. Said price of \$18.75 is not a reduced price or a special or introductory price and is not limited as to time but is the customary price at which such quilts are sold by respondent in the usual and regular course of business at all times.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by the respondent in describing the said products as hereinbefore set out in paragraphs 2 and 3 were, and are calculated to, and have had and now have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As the result of this erroneous belief, a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade has been diverted unfairly to respondent from competitors engaged in the business of selling and distributing quilts, and similar products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public, and of competitors of respondent, and constitute an unfair method of competition 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, answer of the respondent, testimony and other evidence taken before examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by Carrel F. Rhodes, counsel for the Commission, and by J. Frederick Schneider, counsel for the respondent, oral argument not having been requested, 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, Chester L. Thomas, trading as Thomas Quilt Factories, or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of quilts or other bed covering in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or regular prices or values of quilts or other bed covering prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

2. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced, or introductory prices, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices at which respondent sells such products in the normal and usual course of business.

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.

IN THE MATTER OF

J. W. COOPER AND JAMES J. COOPER, TRADING AS
"CURL-O-WAVE COMPANY"COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3524. Complaint, Aug. 4, 1938—Decision, Feb. 23, 1940*

Where two individuals engage in manufacture, sale, and distribution of hair curling preparation under designation "Curl-O-Wave," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of such preparations in commerce as aforesaid, and including many who distribute and sell such hair curling fluids and do not in any way misrepresent quality and character of their products or effectiveness thereof; in advertising circulars and folders, and in advertisements in magazines and newspapers circulated generally throughout the United States—

Represented that their said product was odorless and beneficial to hair, and that use thereof made straightest hair naturally curly, and would transform obstinate hair into dainty curls and improve hair texture, and constituted a new discovery, and was not an ordinary curling fluid, facts being it was such ordinary curling fluid, and various representations otherwise made by them were grossly exaggerated, misleading and untrue, and it would not accomplish results and did not have qualities claimed therefor;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and with result, as direct consequence thereof, that number of consuming public purchased substantial volume of their preparation and trade was diverted unfairly to them from competitors also engaged in distribution and sale of such preparations in commerce, and who truthfully advertise their products and effectiveness thereof:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. John R. Phillips, Jr. and *Mr. DeWitt T. Puckett* for the Commission.

Mr. James J. Cooper, pro se.

COMPLAINT¹

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 J. W. Cooper, an

¹ Commission on February 23, 1940, amended complaint to include as additional party respondent, James W. Cooper.