

Syllabus

IN THE MATTER OF

HERBERT S. ERWIN AND MABEL T. ERWIN, TRADING AS
ERWIN FEATHER QUILT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4011. Complaint, Feb. 2, 1940—Decision, Apr. 29, 1940*

Where two individuals engaged, under trade name, in manufacture, sale and distribution of quilts, comforts, pillows, pads, bedspreads, drapes, and like products, by agents and through various advertising media, to purchasers in various other States and in District of Columbia—

Represented to members of purchasing public that their said products were offered at special prices and for a limited time only, and that prices quoted were reduced or special prices which did not prevail at any and all times, through circulating to purchasers and prospective customers throughout the United States by mail advertising folders, pamphlets, circulars, and other literature, and through agents who personally solicited orders, such false and misleading statements and representations concerning their said products as "Return this card at once for our Special Offer for This Week Only," "Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only * * *," and through statements and invitations of similar tenor with respect to their so-called "Fall and Pre-Holiday Purchase Plan," and through selling to prospective purchasers thus contacted their products at prices quoted, and represented as special prices or those reduced from the usual, customary and regular selling prices and as limited as to time;

Facts being their said quilts, comforts, pillows, and various other products, as above indicated, never had a usual, regular and customary retail price greater or other than that quoted pursuant to said offer, said quoted special or reduced prices at which such products were sold pursuant to said offer were not, in fact, reduced special prices for limited time only, but were in fact the usual, regular and customary retail selling prices of products in question at which they had regularly sold said products to all purchasers at all times for period of more than 1 year last past;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken beliefs that such false, deceptive, and misleading statements and representations were true, and of inducing portion of said public, because of such erroneous and mistaken beliefs, to purchase their said products:

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. Carrel F. Rhodes for the Commission.

Mr. Malcolm H. Lindsey and *Mr. Brough Richey, Jr.*, of Columbus, Ohio, for respondents.

Complaint

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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 Herbert S. Erwin and Mabel T. Erwin, individually, and trading as Edwin Feather Quilt Co., hereinafter referred to as respondents, have 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 issue its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Herbert S. Erwin and Mabel T. Erwin are individuals operating and doing business under the trade name of Erwin Feather Quilt Co., with their office and principal place of business located at 1598 East Livingston Avenue, Columbus, Ohio.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, selling, and distributing quilts, comforts, pillows, pads, bedspreads, drapes, and like products under the trade name of Erwin Feather Quilt Co. Said respondents now cause, and for more than 1 year last past have caused, their said products to be sold by agents and through various advertising mediums, and have caused the same, when sold, to be transported from their principal place of business in Columbus, Ohio, to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Ohio 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 products so sold and distributed by respondents in commerce between and among 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, respondents, for the purpose of inducing the purchase of the commodities offered for sale by them, have circulated to purchasers and prospective customers throughout the United States by mail, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements and representations concerning the value and price of the quilts, comforts, pillows, pads, bedspreads, drapes, and various products sold by them. Among such statements and representations the following are typical examples:

Return this card at once for our Special Offer for This Week Only.

Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only is the limit we must place on our special offer * * *.

Mail this card today for complete information on this outstanding Fall and Pre-Holiday Purchase Plan. One week only is the limit we must place on our special offer.

Fall and Preholiday Purchase Plan One week only is the limit we must place on our special offer to let you personally examine these exceptional quilts and see for yourself their beautiful colors—attractive designs, and know the comfort that comes from these warm light-weight feather quilts.

Upon inquiry received from prospective purchasers procured through advertisements containing said representations, respondents, in person and through agents, contact the prospective purchasers and sell them said products at prices quoted, which quoted prices are represented to be reduced prices or special prices limited as to time and one-half the usual, customary and regular selling prices therefor.

The aforesaid statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and various products and also serve as representations on the part of the respondents to members of the purchasing public that the said products are offered at special prices for a limited time only and that the prices quoted are reduced prices or special prices that do not prevail at any and all times.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, as hereinabove set out are deceptive, false, and misleading. Respondents' said quilts, comforts, pillows, pads, bedspreads, drapes and like products have never had a usual, regular and customary retail sales price greater or other than the price quoted pursuant to said offers. The quoted special or reduced prices at which said products are sold pursuant to said offers are not in fact reduced special prices for a limited period of time. The said special prices quoted pursuant to the so-called special Pre-holiday or other offer and represented as existing for a limited period of time are in fact the usual, regular and customary retail selling prices of said products and respondents have regularly and customarily sold said products to all purchasers at all times for a period of more than 1 year last past at said prices.

PAR. 5. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their products, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and induces a portion

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of the purchasing public because of such erroneous and mistaken beliefs to purchase respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and other similar products.

PAR. 6. The aforesaid acts and practices of 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 February 2, 1940, issued and thereafter served its complaint in this proceeding upon respondents Herbert S. Erwin and Mabel T. Erwin, individually and trading as Erwin Feather Quilt Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 18, 1940, 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 hearings 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. Respondents Herbert S. Erwin and Mabel T. Erwin are individuals operating and doing business under the trade name Erwin Feather Quilt Co., with their office and principal place of business located at 1598 East Livingston Avenue, Columbus, Ohio.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, selling, and distributing quilts, comforts, pillows, pads, bedspreads, drapes, and like products under the trade name Erwin Feather Quilt Co. Said respondents now cause, and for more than 1 year past have caused, their said products to be sold by agents and through various advertising mediums, and have caused the same, when sold, to be transported from their principal place of business in Columbus, Ohio, to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Ohio and in the District of Columbia.

There is now, and has been for more than 1 year past, a course of trade in said products so sold and distributed by respondents in commerce between and among 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, respondents, for the purpose of inducing the purchase of the commodities offered for sale by them, have circulated to purchasers and prospective customers throughout the United States by mail, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements and representations concerning the value and price of the quilts, comforts, pillows, pads, bedspreads, drapes, and various products sold by them. Among such statements and representations the following are typical examples:

Return this card at once for our Special Offer for This Week Only.

Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only is the limit we must place on our special offer * * *.

Mail this card today for complete information on this outstanding Fall and Pre-Holiday Purchase Plan. One week only is the limit we must place on our special offer.

Fall and Preholiday Purchase Plan One week only is the limit we must place on our special offer to let you personally examine these exceptional quilts and see for yourself their beautiful colors—attractive designs, and know the comfort that comes from these warm light-weight feather quilts.

Upon inquiry received from prospective purchasers procured through advertisements containing said representations, respondents in person and through agents, contact the prospective purchasers and sell them said products at prices quoted, which quoted prices are represented to be reduced prices or special prices from the usual, customary, and regular selling prices and limited as to time.

The aforesaid statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and various products and also serve as representations on the part of the respondents to members of the purchasing public that the said products are offered at special prices for a limited time only and that the prices quoted are reduced prices or special prices that do not prevail at any and all times.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, as hereinabove set out are deceptive, false and misleading. Respondents' said quilts, comforts, pillows, pads, bedspreads, drapes, and like products have never had a usual, regular

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and customary retail sales price greater or other than the price quoted pursuant to said offers. The quoted special or reduced prices at which said products are sold pursuant to said offers are not in fact reduced special prices for a limited period of time. The said special prices quoted pursuant to the so-called special preholiday or other offer and represented as existing for a limited period of time are in fact the usual, regular and customary retail selling prices of said products and respondents have regularly and customarily sold said products to all purchasers at all times for a period of more than one year last past at said prices.

PAR. 5. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their products, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and induces a portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and other similar products.

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 the 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Herbert S. Erwin and Mabel T. Erwin, individually and trading as Erwin Feather Quilt Co., or trading under any other name or names, their agents, representatives, and employees directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of quilts, comforts, pillows, pads, bed spreads, drapes, or other like products

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in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing that the prices at which respondents offer for sale and sell their products constitute a discount to the purchaser, or that such prices are special or reduced prices, 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 respondents sell such products in the normal and usual course of business.

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.

Complaint

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IN THE MATTER OF

LELAND F. BENHAM, TRADING AS LE FLOR COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4031. Complaint, Feb. 14, 1940—Decision, Apr. 29, 1940*

Where an individual engaged in sale and distribution of his "Le Flor Weight Reduction Tablets," together with so-called "deficient element" diet supplied therewith by him to purchasers of said tablets in various other States of the United States and in the District of Columbia; in advertisements of his said preparation which he disseminated and caused to be disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

- (a) Represented that his so-called "Le Flor Method" treatment for obesity, consisting of said tablets and so-called "deficient element" diet, constituted a cure or remedy for said condition and a competent and scientific treatment therefor, containing no dehydration drugs, facts being said tablets did not constitute either a cure or remedy or competent or scientific treatment for said condition, and was of no value in treatment thereof, and, in presence therein of phenolphthalein, contained in effect dehydration drug, only therapeutic value of tablets in question was as a laxative or cathartic, and neither diet supplied by him as aforesaid, nor combination of tablets and diet, constituted cure or remedy or competent and scientific treatment for condition in question; and
- (b) Represented that price of \$1 per box, or 6 for \$5, at which product was being offered for sale, was a special price and that regular and customary one therefor was \$2 per box, facts being price at which he was offering and selling said tablets was the regular, customary, and usual one at which he offered and sold same, and was neither special reduced nor introductory;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations, and advertisements were true, and of inducing portion of such public because of said erroneous and mistaken belief, to purchase his said medicinal preparation:

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 chase his said medicinal preparation:

Mr. Carrel F. Rhodes for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., 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