

Complaint

31 F. T. C.

IN THE MATTER OF
NATIONAL SURE-FIT QUILTING COMPANY, INC.

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

Docket 3728. Complaint, Mar. 1, 1939.—Decision, June 10, 1940

Where a corporation engaged in manufacture of bed quilts, comforters and related quilt products and in sale and distribution thereof to various purchasers and retailers in various States and in the District of Columbia, and including among aforesaid products a certain comforter, which, made by it under patent process, was composed of 95 percent cotton and of 5 percent down, included between two cotton bats—

Made use in advertising, offering and selling its said comforter of its registered trade mark "Villadown," which, as advertised by it generally and by local distributors in several States, was featured in large display type, with small lettering setting forth 95 percent cotton composition and 5 percent down, and notwithstanding fact said comforter was not one filled entirely with down, or undercoating of waterfowl as understood by industry and substantial portion of purchasing public when used in the bedding industry;

With effect, through its said practice of using or permitting use by local distributors of said word "Villadown," in advertising, describing or representing article in question, in larger lettering or type or in any wise different than lettering or type used in descriptive words showing and describing real content or consistency of article, i. e., 95 percent cotton and 5 percent down, of misleading and deceiving substantial number of retailers and members of public into erroneous and mistaken belief that said article was manufactured from down, without intermixture of cotton in proportion as aforesaid, and into purchase of a substantial number of said comforters 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.

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Randolph W. Branch, for the Commission.

Mr. Louis Schumacher, of New York City, 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 National Sure-Fit Quilting Co., Inc., a corporation, 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, National Sure-Fit Quilting Co., Inc., is a corporation organized and existing under the laws of the State

52

Complaint

of New York with its principal office and place of business located at 40-20 Twenty-second Street, Long Island City, N. Y.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing bed quilts, comforters and related quilted products, including a certain comforter to which it has given the name of "Villadown." Respondent sells its "Villadown" comforters to various jobbers and retail dealers in such articles situated in various States of the United States and in the District of Columbia and causes them, when sold by it, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said comforters among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the bedding trade and in the feather and down industry, "down" is and for a long time has been generally understood to refer to the undercoating of the waterfowl consisting of light and fluffy filaments grown from one quill point but without any quill shaft, and a "down" or "down-filled" article is and for a long time has been generally understood to be one containing not less than 90 percent pure down, and for many years past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: fluffy and soft portions of coats of birds other than feathers. Comforters filled wholly with "down" have for many years held, and still hold, great public esteem because they combine buoyancy and lightness with great warmth in a manner not possessed by other fillers. In the mind of the consuming public a "down" article means one filled so far as manufacturing conditions permit exclusively with "down."

PAR. 4. Respondent has caused the word "Villadown" to be registered as a trade-mark and has used the same with the design of identifying its article to the trade and to the public and of establishing and preserving such good-will and popularity as the article may acquire from its public acceptance. For such good-will to be engendered, the name "Villadown" in connection with the articles, must be brought to the attention of the purchasing public, and in order for those who distribute them either at wholesale or at retail to take advantage of the existence of such good-will, the articles are normally advertised, offered and sold by them under the aforesaid trade-mark or name "Villadown."

PAR. 5. The designation by respondent of its comforters as "Villadown" and the representations and statements of respondent and its

customers that such articles were "Villadown" Comforters have served as representations to prospective purchasers that the filler was composed substantially of "down."

PAR. 6. The aforesaid representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's "Villadown" comforters are manufactured by a process of combining two layers of cotton with one layer of "down" over which is sewn a covering of some fabric appropriate for the purpose and the whole stitched or quilted in the manner usual in such articles for the prevention of shifting or matting of the filler. The filler is composed of approximately 95 percent of cotton and 5 percent of "down." The nature of the filler is not apparent from an inspection or examination of the exterior and the quantity of down is insufficient to impart to the comforter any qualities not possessed by one filled entirely with cotton.

PAR. 7. The use of the foregoing false, deceptive, and misleading representations with respect to the said "Villadown" comforters 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 false representations are true, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the said comforters.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 March 3, 1939, issued and served its complaint in this proceeding upon respondent National Sure-Fit Quilting Co., Inc., a corporation, charging respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 22, 1939, the respondent filed an answer in the proceeding. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by Randolph W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Schumacher, attorney for the respondent, before Robert S. Hall, an Examiner 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 the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs, in support of the complaint, and 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. Respondent, National Sure-Fit Quilting Co., Inc., is a corporation organized, and existing under the laws of the State of New York, with its principal office and place of business located at 40-20 Twenty-second Street, Long Island City, N. Y.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing bed quilts, comforters, and related quilted products, including a certain comforter to which it has given the name of "Villadown." Respondent sells its "Villadown" comforters to various jobbers and retail dealers situated in various States of the United States and in the District of Columbia, and causes them, when sold by it, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said comforters in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondent has caused the word "Villadown" to be registered as a trade-mark and has used the same with the design of identifying its article to the trade and to the public and of establishing and preserving such good will and popularity as the article may acquire from its public acceptance. For such good will to be engendered, the name "Villadown" in connection with the articles, must be brought to the attention of the purchasing public, and in order for those who distribute them either at wholesale or at retail to take advantage of the existence of such good will, the articles are normally advertised, offered and sold by them under the aforesaid trade-mark or name "Villadown."

PAR. 4. Respondent's product "Villadown" is a comforter, the filler of which is composed of 95 percent cotton and 5 percent down; the cover of the comforter has a weight of from 1¾ to 2 pounds. In its

Order

31 F. T. C.

construction two cotton bats, each weighing about 2 pounds, are used, between which the 5 percent, or approximately 4 ounces of down is placed. The cotton bats are each $1\frac{1}{4}$ to $1\frac{1}{2}$ inches in thickness. The comforter as a finished product is approximately 6 feet by 7 feet. The respondent's article, "Villadown" is manufactured by a patented process of respondent, and has been on the market since 1937. The article is advertised generally by the respondent, and by local distributors in several States, by featuring the word "Villadown" in large display type, and the real composition thereof, to wit, 95 percent cotton, and 5 percent down, in small lettering.

PAR. 5. The word "down" as used in the bedding industry is understood by the industry and a substantial portion of the purchasing public to mean, and is, the undercoating of the waterfowl. There is a substantial portion of the purchasing public which believes the word "Villadown" when used in advertising, or as descriptive of comforters, to mean a pure down comforter, or one filled entirely with down.

PAR. 6. The practice of respondent of using or permitting the use by local distributors of the word "Villadown" in advertising, describing, or representing the article, in larger lettering or type, or in any wise different from the lettering or type used in the descriptive words showing and disclosing the real content or consistency of the article, to wit, 95 percent cotton, and 5 percent down, as above set forth, has the capacity and tendency to, and does, mislead and deceive a substantial number of retail dealers and members of the public into the erroneous and mistaken belief that said article is manufactured from "down," without the intermixture of cotton in the proportion of 95 percent cotton, with only 5 percent down, and into the purchase of a substantial number of said comforters because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice 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, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission, duly designated by it in support of the

allegations of said complaint and in opposition thereto and briefs filed herein, 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, National Sure-Fit Quilting Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of comforters or similar products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the term Villadown or any other term which includes the word "down" or any colorable simulation thereof or using any other term of similar import or meaning, to describe or designate any quilt, comforter, or other similar product, the filler of which is not composed wholly of "down," the light fluffy undercoating of the waterfowl, provided that if said term is used to describe a filler composed in part of down and in part of materials other than down such term must be immediately accompanied by a word or words of equal size or conspicuousness designating the substance, fiber or material of which said filler is composed with designation of each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

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

IN THE MATTER OF
UNITED FACTORIES, INC.

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

Docket 3797, Complaint, May 31, 1939—Decision, June 10, 1940

Where a corporation engaged in sale and distribution of its so-called automotive engine reconditioner or "Micaseal" to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of preparations designed for similar uses in commerce among the various States and in said District; in advertisements of its said product in newspapers, periodicals, circulars, and other printed matter circulated and distributed among prospective purchasers in various States and in said District, and in continuities broadcast from radio stations of extra-State audience—

- (a) Represented, directly and by implication, that use of its said preparation would effect substantial economies in operation of an automobile through lessening gasoline and oil consumption, and that, put into the motor through the spark plug openings, it filled scores and scratches on cylinder walls and formed a cushion seal which increased compression, checked excessive carbon formation, added speed, power, and smoothness to operation of old motors, and, in fact, reconditioned a motor at a saving of 95 percent over ordinary mechanical methods of reboring cylinders and refitting pistons therein, facts being preparation in question was not essentially different in chemical composition from various other substances or products or preparations or "engine improvers," scientific principle of which was based on action of vermiculite in the expanded or unexpanded form, and in all of which, claims for products were based upon action of expended vermiculite as in said "Micaseal," and said product would not effect substantial economies or accomplish other results above claimed for it, and use thereof in automobile engine would not produce equivalent of mechanical reconditioning job, nor any of the beneficial results produced by such reconditioning nor improve motor performance, as claimed by it; and
- (b) Represented that nationally known laboratories had made impartial tests of said "Micaseal" and had certified to the truth and accuracy of its aforesaid representations through such statements as "Tested and Approved by these Laboratories: Kansas City Testing Laboratories, Inc. * * * Automotive Test Laboratories of America * * * Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal," etc., facts being no nationally known laboratory had made an impartial test of said product or issued a certificate certifying to the truth and accuracy of the representations made by it with respect thereto as hereinbefore indicated;