

IN THE MATTER OF

SOHN & COMPANY, INC., AND BENJAMIN SOHN, MORRIS SOHN, AND ISADORE SOHN, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF SOHN & 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 4072. Complaint, Mar. 28, 1940—Decision, July 9, 1940

Where a corporation and three individuals who were officers and directors thereof and, as such, managed, controlled, and dominated its corporate affairs and activities, and acting in conjunction and cooperation with each other in carrying out the acts and practices and methods below set forth, and engaged in manufacture of mattresses and bedding with old, second-hand, used, and discarded cotton and other materials which they purchased and which, after being combed with a type of machine and reworked, were covered with new coverings and, in sale and distribution to purchasers in various other States and including wholesalers, retailers, and other buyers who resold same to purchasing public, of said products, which, after being fitted with new coverings as aforesaid, had appearance of new mattresses—

Sold said products, with appearance aforesaid, and with no marking or designation clearly and conspicuously stamped thereon, or attached thereto, to indicate to purchasing public that such mattresses were in fact made from old, previously used, discarded, and second-hand mattresses, and in case of certain of said mattresses thus made but with labels bearing terms "Made of previously used materials" stamped thereon with such markings so illegible and inconspicuous that it could not be read by wholesale and retail buyers thereof or by members of the purchasing public, to retailers, and to jobbers and wholesalers, by whom said mattresses were sold to purchasing public without disclosing fact that they were reconditioned and made from old, used, discarded, and second-hand materials which had been remanufactured and fitted with new covering, and so as to indicate products in question were, in fact, composed in their entirety of new materials which had never been previously used, and thereby failed to disclose, through use by corporation and individuals aforesaid of said acts and practices, the kind and type of materials from which their products were made;

With the result that they thereby placed in the hands of unscrupulous and uninformed persons, means and instrumentality whereby such persons had been and were enabled to mislead and deceive members of purchasing and consuming public into erroneous and mistaken belief that their products, nearly all of which were made from old, used, discarded, and second-hand materials covered with new covering, were manufactured from new materials, and with effect, through use of such practices, of misleading and deceiving retail and wholesale dealers who purchase such products and substantial portion of purchasing public into erroneous and mistaken belief that said mattresses, made as aforesaid, were new products manufactured from new and unused materials, and with the result, as consequence of such belief, that said public was induced to, and did, purchase substantial quantities of 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. Robert Mathis, Jr., for the Commission.

King & Esterman, of Chicago, Ill., for F. E. Hummel, trustee in bankruptcy for respondents, and, along with *Mr. Hamilton Klorfine*, of Chicago, Ill., for Morris Sohn.

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 Sohn & Co., Inc. and Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & Co., Inc., 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 issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sohn & Co., Inc., is now and has been at all times mentioned herein a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Respondents Benjamin Sohn, Morris Sohn, and Isadore Sohn are individuals and are president, secretary, and treasurer, respectively, and directors of respondent Sohn & Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices, and methods hereinafter alleged. All have their offices and principal place of business at 1450 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than two years last past engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in commerce in said merchandise among and between the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton and other used materials. Such materials are, after being combed with a type of machine and reworked, then used by respond-

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ents in the manufacture of mattresses and bedding which are covered with new covering and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-hand materials, after being fitted with new coverings as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been remanufactured and fitted with a new covering and so as to indicate that said mattresses are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand materials do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. Through the use of the acts and practices as herein set forth, respondents have and do fail to disclose the kind and type of materials from which their products are manufactured and thereby respondents have placed in the hands of unscrupulous and uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials when in truth and in fact nearly all of respondents' mattresses are manufactured from old, used, discarded, and second-hand materials which are covered with a new covering.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had and now has the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mat-

tresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' 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 March 28, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Sohn & Co., Inc., and Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & Co., Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of said complaint, the respondents herein filed an answer in which they in part admitted and in part denied the allegations of the complaint. Subsequent thereto, under date of June 18, 1940, respondents, with the approval of the Commission, withdrew their original answer and filed herein a substitute answer, admitting all the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts.

Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission, having duly considered the same 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 Sohn & Co., Inc., is now and has been at all times mentioned herein a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Respondents Benjamin Sohn, Morris Sohn, and Isadore Sohn are individuals and are president, secretary, and treasurer, respectively, and directors of respondent Sohn & Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices, and methods hereinafter stated.

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All have their offices and principal place of business at 1450 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now, and have been for more than two years last past, engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton and other used materials. Such materials are, after being combed with a type of machine and reworked, then used by respondents in the manufacture of mattresses and bedding which are covered with new coverings and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-hand materials, after being fitted with new coverings, as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been remanufactured and fitted with a new covering and so as to indicate that said mattresses are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand material do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. Through the use of the acts and practices as herein set forth, respondents have failed to disclose the kind and type of materials from which their products are manufactured. Respondents

have placed in the hands of unscrupulous and uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials when in truth and in fact nearly all of respondents' mattresses are manufactured from old, used, discarded, and second-hand materials which are covered with a new covering.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had and now has the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mattresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

CONCLUSION

The aforesaid acts and practices of 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 substitute 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sohn & Co., Inc., its officers, representatives, agents, and employees, and the respondents, Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & Co., Inc., 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:

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1. Representing in any manner, or by any means or device, that mattresses which are composed in whole or in part of old, used, discarded, or second-hand materials are new mattresses or are made from new or unused materials.

2. Failing to permanently affix to mattresses made in whole or in part from old, used, discarded or second-hand materials, labels, or tags which clearly and conspicuously reveal that such mattresses are in fact composed of old, used, discarded, and second-hand materials, and which tags or labels cannot readily be removed, obliterated, obscured, or minimized.

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
BLUE RIBBON CANDY COMPANY, INC., AMERICAN
CANDY AND SALES COMPANY

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

Docket 4091. Complaint, Apr. 17, 1940—Decision, July 9, 1940

Where a corporation engaged in manufacture of candy and in sale of certain assortments thereof which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes, when sold or distributed to consumers, and included, as illustrative, assortment of 60 bars of candy of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan by which customer purchasers punching numbers ranging from one to three paid 1 cent, 2 cents, and 3 cents for said product, and purchasers punching number "0" paid nothing, and in furnishing various other push cards for use in the sale and distribution of its candy by means of game of chance, gift enterprise, or lottery scheme, and similar to that above described and varying therefrom in detail only—

Sold such assortments, together with said push cards, to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with sales plan aforesaid, under which prices of bars in question were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail prices thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plan above set forth, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to adopt and use said, or any method, involving a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons, attracted by said sales plan or method employed by it in sale and distribution of its candy and by element of chance involved therein, were thereby induced to buy and sell its said product in preference to candy of said competitors who do not use same or equivalent methods and with result, through use of such method and because of said game of chance of diverting unfairly trade in commerce to it from its competitors aforesaid who do not use same or equivalent methods:

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

Mr. L. P. Allen, Jr., for the Commission.