

Syllabus

IN THE MATTER OF
ARTHUR SOHN AND CARL SOHN, INDIVIDUALS,
TRADING AS SOHN BROS.

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

Docket 4073. Complaint, Mar. 28, 1940—Decision, July 16, 1940

Where two individuals engaged in manufacture of mattresses and bedding with old, second-hand, used, and discarded cotton which they purchased, and which, after being combed by machine and reworked, was used by them in making said products, with new coverings, and in sale and distribution to purchasers in various other States, 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 of old, previously used, discarded, and second-hand materials and, in case of said mattresses thus made but with labels bearing terms "Made of previously used materials" stamped thereon, with such marking so illegible and inconspicuous that it could not be read by wholesale and retail buyers thereof or by members of purchasing public, to retailers and jobbers and wholesalers, by whom said products were sold to purchasing public without disclosing fact that they were reconditioned and made from old, used, discarded, and second-hand material fitted with new covering, and under such conditions as to cause members of purchasing public erroneously to believe that they were in fact composed in their entirety of new materials which had never been previously used;

With result that through their said acts and practices in placing new coverings on mattresses made from old, used, discarded, and second-hand materials, without disclosing fact that such materials were old, etc., they placed in hands of unscrupulous or uninformed persons means and instrumentality whereby they had been and were enabled to mislead and deceive members of purchasing and consuming public into erroneous and mistaken belief that their said products were manufactured from new materials, and with effect of misleading and deceiving retail and wholesale dealers who purchased such products, and substantial portion of purchasing public, into erroneous and mistaken belief that products in question, manufactured from old, used, and discarded materials, were new mattresses made from new and unused materials, and with result and consequence that purchasing public was induced to and did buy 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.

Before *Mr. John W. Addison*, trial examiner.

Mr. Robert Mathis, Jr., for the Commission.

Weinstein, Murray & Weinstein and *Dubrow & Sohn*, of Chicago, Ill., for respondents.

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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 Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., 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. Respondents Arthur and Carl Sohn are individuals trading under the firm name Sohn Bros., with their office and principal place of business located at 1709 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than 2 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 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-handed 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 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 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.

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 the 28th day of March 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., 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 and the filing of respondents'

answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said substitute answer, 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. Respondents Arthur and Carl Sohn are individuals trading under the firm name Sohn Bros., with their office and principal place of business located at 1709 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than 2 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 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, which material, after being combed with a machine and reworked, then is 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 material, 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

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who sell them to the purchasing public without disclosing the fact that such mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been fitted with a new covering, and under such conditions as to cause members of the purchasing public to erroneously believe 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. The acts and practices of the respondents in placing new coverings on mattresses made from old, used, discarded, and second-hand materials without disclosing the fact that such materials are old, used, discarded, and second-hand places in the hands of unscrupulous or 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.

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 respondent's 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

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

It is ordered, That the respondents, Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., or under any other trade name or names, 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:

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 cannot readily be removed, obliterated, obscured, or minimized and, which clearly and conspicuously reveal that such mattresses are in fact composed of old, used, discarded, and second-hand materials in whole or in part, as the case may be.

It is further ordered, That the respondent 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.

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IN THE MATTER OF

JOHN H. MULKEY, TRADING AS WESTERN NOVELTY
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4082. Complaint, Apr. 4, 1940—Decision, July 16, 1940

Where an individual engaged in offering for sale novelty jewelry, including finger rings with setting of hematite or certain nonprecious crystal, to dealer purchasers in various States and in the Territory of Alaska, and in substantial competition as thus engaged with others engaged in sale of novelty jewelry and gem jewelry, including rings as aforesaid, and including some who sell rings set with nonprecious crystals, including hematite, and who do not in any manner misrepresent their products or origin thereof—

Represented and implied that hematite settings in his said rings were diamonds or gem or jewel stones of dark or unusual color produced in Alaska, through such typical statements, etc., in advertisements circulated among prospective purchasers, as "Alaska Black Diamond" and "Genuine Laska Black Diamond" and through latter words also on metal tag customarily attached to such rings, and through statements on placards circulated by him among tourists journeying to Alaska and advertising his said products as "sold at all reliable curio and jewelry stores in Alaska—Watch for this label (meaning tag above referred to and depicted in advertisement)—There are imitations on the market";

Fact being none of his said rings were set with diamonds or gem or jewel settings but, as indicated, with ground, shaped, polished settings of hematite crystals, substance of which is not precious stone or gem, but is an ore of iron and called also in crystal form "Specular Iron" and constitutes nonprecious crystal of variable dark colors;

With result that purchasing public was deceived and erroneously led to believe and understand that his said rings were in fact set with diamonds or jewels or gems of dark and unusual color, produced in Alaska, and with consequence, as result of such belief, that number of purchasing public bought his said rings and trade was thereby diverted unfairly to him from his competitors in commerce between and among the various States and with said Territory; to their injury and that of public:

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 in commerce, and unfair and deceptive acts and practices therein.

Mr. Wm. T. Chantland for the Commission.

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 John H. Mulkey, an individual, trading as Western Novelty Co., has violated the pro-