

IN THE MATTER OF
AMERICAN HAIR & FELT COMPANY, AND CLINTON
CARPET COMPANY

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

Docket 3822. Complaint, June 16, 1939—Decision, Nov. 2, 1940

Where a corporation engaged in the manufacture, sale, and distribution of rug cushions, primary purpose of which is to prolong life of rugs under which placed and to deaden noise in rooms where used, and types of which cushions, as made by it, included those made entirely of hair except as below set forth, and others made of hair and jute with burlap base, or of approximately 95 percent hair with strands of jute with burlap center, or jute with interwoven strands of burlap; and its corporate subsidiary engaged in sale and distribution of its said products—

- (a) Represented, in the course and conduct of their said business of selling, to purchasers in various States and in the District of Columbia, various types of rug products made by said manufacturer, by means of advertisements published and disseminated through magazines, trade journals, pamphlets, and in other printed matter distributed among prospective purchasers in the various States and in the District of Columbia, that rug cushions composed of materials other than hair would not serve the customary and ordinary purposes for which they were intended and used, and would cause rugs under which used to wear out sooner than would be the case if no cushions were used, through such statements as "Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these 'bargain pads' pack down in hard lumps that actually make rugs wear out sooner," and "Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used on so-called 'cheap' rug pads. Don't be misled—insist on getting an ALL-HAIR cushion," and others of similar tenor:

Facts being that any cushioning material, even paper, will serve some useful purpose as a rug cushion, jute and jute and hair mixed pads will prolong life of rugs under which placed and otherwise serve purposes for which intended and used, and such pads or cushions, under normal use in ordinary circumstances, will not become lumpy or cause rugs to wear out sooner than would be the case if no cushion were used; and

- (b) Represented, for a time, that their "Ozite" cushions were composed entirely of hair, through label, later changed to disclose inclusion in cushion in question of reinforcing burlap center, reading "OZITE Rug Cushion is made of ALL HAIR," and through depiction of said label in its advertising matter:

Facts being while primary purpose of burlap or jute strip, as included by it, is to serve as necessary reinforcement to hold intact cushion composed of hair, such strip does have some cushioning effect, and to designate such a pad as "All Hair," without disclosing presence therein of said strip of burlap or jute, is not accurate description of product in question and is confusing to purchasers who do not understand technical problems involved in the manufacturing and handling of pads composed of hair;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of their said "Ozite" cushions as result 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. Lewis C. Russell*, trial examiner.

Mr. DeWitt T. Puckett, for the Commission.

Mr. Leo Mann of Lines, Spooner & Quarles, of Milwaukee, Wisc., for respondents.

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 American Hair & Felt Co., a corporation, and Clinton Carpet Co., a corporation, hereinafter referred to as respondents, have violated the provisions of the 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, American Hair & Felt Co., a corporation doing business under the laws of Delaware, with its main office in the Merchandise Mart, 222 West North Bank Drive, Chicago, Ill., is now and has been for several years last past engaged in the manufacture, sale, and distribution of various commodities made from animal hair and jute including underlays or cushions for rugs and carpets.

Respondent, Clinton Carpet Co., a corporation doing business under the laws of Delaware, with its main office in the Merchandise Mart, 222 West North Bank Drive, Chicago, Ill., is now and has been for several years last past engaged in the sale and distribution of rug and carpet underlays or cushions manufactured by respondent, American Hair & Felt Co. Respondent, Clinton Carpet Co., is a subsidiary of respondent, American Hair & Felt Co.

Respondents now cause, and for more than 1 year last past have caused, their said cushions or underlays, when sold by them, to be shipped from their said places of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States other than Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cushions or underlays in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. The respondents manufacture and sell, as aforesaid, various types of rug underlays or cushions, among which is a product known and designated as "Ozite."

PAR. 3. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents have disseminated and caused to be disseminated, false, misleading, and disparaging statements and claims relative to the qualities and characteristics of rug underlays or cushions not composed solely of hair. Said false and disparaging representations and claims have appeared in magazines, trade journals, pamphlets, booklets, and other printed matter distributed in commerce among and between the various States of the United States. Among and typical of the said claims and representations are the following:

Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of **ALL HAIR**, because only too often these "bargain pads" pack down in hard lumps that actually make rugs wear out sooner.

Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used in so-called "cheap" rug pads. Don't be misled—insist on getting an **ALL HAIR** cushion.

Rug pads cheapened with jute are costly "bargains". When they pack down into hard lumps they wear out sooner]

There is no substitute * * * because nothing less than Genuine Circle Tread Ozite quality is "good enough" to do the job!

Age or dry air causes jute to disintegrate into a fine powder in a short time while moist air makes it pack into a hard mass. Thus jute pads pack down and form lumps, and actually make rugs wear out sooner!

The aforesaid statements and claims and others of similar import but not herein set out serve as representations on the part of respondents that rug cushions or underlays not composed wholly of hair will not withstand the customary and ordinary usage or treatment to which said cushions are subjected; that they will become lumpy; that they will disintegrate in dry air and are ruined by moist air; that they will cause a rug to wear out sooner than would be the case if no cushion at all were used under such rug.

PAR. 4. In truth and in fact, jute or jute mixed rug cushions satisfactorily meet the needs and uses for which they are customarily sold. They will not pack down or become lumpy enough to impair their efficiency. They will not disintegrate in dry air or become ruined by moist air. They will not cause a rug to wear out sooner than would be the case if no cushion at all were used.

PAR. 5. In addition to the dissemination of disparaging statements, the respondents have represented, in their various advertising as above described that their product known as "Ozite" is composed

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entirely of hair. Typical of this representation, respondents attach to said product a label which reads as follows:

OZITE

Rug Cushion

Made of ALL HAIR

A picture of such label also appears in respondents' various advertising material.

In truth and in fact said product known and designated as "Oazite" is not composed entirely of hair but instead is composed of two layers of hair between which has been placed a layer of burlap or jute cord, a vegetable fiber. This "Ozite" product is so made that the existence of a layer of burlap, or jute cord between said layers of hair, is not readily discernible to the purchaser.

PAR. 6. The use by respondents of the false, misleading, and disparaging statements and claims set forth and referred to herein, including the representations concerning the product known as "Ozite," has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations and claims are true, and to cause them to purchase substantial quantities of said products, as a result of such erroneous belief.

PAR. 7. 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 June 16, 1939, issued and subsequently served its complaint in this proceeding charging respondents, American Hair & Felt Co., a corporation, and Clinton Carpet Co., a corporation, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Leo Mann, attorney for the respondents, before Lewis C. Russell, 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. The respondent, American Hair & Felt Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at 222 West North Bank Drive, Chicago, Ill. It is now, and has been for several years last past, engaged in the manufacture and in the sale and distribution of rug cushions.

The respondent, Clinton Carpet Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at 222 West North Bank Drive, Chicago, Ill. It is now, and has been for several years last past, engaged in the sale and distribution of rug cushions manufactured by respondent American Hair & Felt Co. Respondent Clinton Carpet Co. is a subsidiary of respondent American Hair & Felt Co.

The respondents cause their products, when sold, to be shipped from their aforesaid places of business in Chicago, Ill., to purchasers thereof located in various States of the United States and in the District of Columbia. During all of the time mentioned herein, respondents have maintained a course of trade in said cushions in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent American Hair & Felt Co. manufactures, and both of respondents sell, four types of rug cushions, namely: (1) A cushion composed entirely of hair, except for a layer of burlap in the center which gives the cushion tensile strength and holds it together. This cushion is sold by respondents under the trade name "Ozite." (2) A combination of mixed hair and jute cushion with a burlap base. (3) A cushion consisting of approximately 95 percent hair, the balance being strands of jute. This cushion also contains a burlap center. (4) A cushion composed of jute with interwoven strands of burlap.

Jute is a vegetable fiber product and burlap is a loosely woven fabric made from jute cord.

PAR. 3. The primary purpose of rug cushions is to prolong the life of rugs under which they are placed and to deaden noise in the rooms where they are used. A cushion, being resilient, prolongs the life of a rug under which it is used by absorbing the pressure to the rug caused by footsteps or such objects as furniture. Any cushioning material that possesses resilience will serve this purpose to some extent.

PAR. 4. During the time mentioned above and in the course and conduct of their business as aforesaid, the respondents, in promoting the sale of their "Ozite" cushion, caused to be published and disseminated, through magazines, trade journals, pamphlets, and in other printed matter distributed among prospective purchasers of rug cushions located in various States of the United States and in the District of Columbia, various advertisements, of which the following are typical:

Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these "bargain pads" pack down in hard lumps that actually make rugs wear out sooner.

Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used in so-called "cheap" rug pads. Don't be misled—insist on getting an ALL-HAIR cushion.

Rug pads cheapened with jute are costly "bargains." When they pack down into hard lumps they wear out sooner!

There is no substitute . . . because nothing less than Genuine Circle Thread Ozite quality is "good enough" to do the job!

Age or dry air causes jute to disintegrate into a fine powder in a short time while moist air makes it pack into a hard mass. Thus jute pads pack down and form lumps, and actually make rugs wear out sooner!

The labels formerly used by respondents in connection with the sale of their "Ozite" cushions read as follows:

OZITE
Rug Cushion
is made of
ALL HAIR

A picture of said label also appeared in the aforesaid advertising matter. Said labels have been changed to read:

OZITE
Rug Cushion
is made of
ALL HAIR
Reinforced with a patented
Adhesive Burlap Center

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PAR. 5. By the use of the representations set out herein, respondents have represented that rug cushions composed of materials other than hair will not serve the customary and ordinary purposes for which they are intended and used, and that they will cause the rugs under which they are used to wear out sooner than would be the case if no cushion were used. They have also represented that their "Ozite" cushions are composed entirely of hair.

PAR. 6. The Commission finds that any cushioning material, even paper, will serve some useful purpose as a rug cushion and that jute and jute and hair mixed pads will prolong the life of rugs under which they are placed and otherwise serve the purposes for which they are intended and used. The Commission further finds that under normal use and ordinary circumstances jute and jute and hair mixed cushions will not become lumpy or cause rugs to wear out sooner than would be the case if no cushion were used. The Commission also finds that respondents' rug cushions sold under the trade name "Ozite" and advertised as "All Hair" cushions are not, in fact, composed entirely of hair, inasmuch as they contain a burlap or jute reinforcing center. Respondents' labels in current use in connection with the sale of their "Ozite" cushions contain a statement disclosing the presence of burlap. The purpose of the respondents in using a burlap or jute center in said "Ozite" pads is to hold together and reinforce the hair from which the pad is principally composed. The use of some such reinforcement is necessary to hold a cushion composed of hair intact, largely in handling. While the primary purpose of the burlap or jute strip is to serve as reinforcement, it does have some cushioning effect, and to designate such a pad as "All Hair" without disclosing the presence of the reinforcing strip of burlap or jute, as respondents formerly did, is not an accurate description of such pad and is confusing to purchasers who do not understand the technical problems involved in the manufacturing and handling of pads composed of hair.

PAR. 7. The use by respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of substantial quantities of respondents' "Ozite" cushions as a result of such erroneous and mistaken belief.

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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, the answer of respondents, testimony and other evidence taken before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by DeWitt T. Puckett, counsel for the Commission, and by Leo Mann, counsel for the respondents (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, American Hair & Felt Co., a corporation, and Clinton Carpet Co., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of rug cushions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that jute, or jute and hair, rug cushions will cause rugs to wear out sooner than if no cushion whatever is used; or that only cushions made of hair are useful as rug cushions; or that jute, or jute and hair, rug cushions will not serve the usual and ordinary purposes for which rug cushions are intended and used.

2. Using the term "All Hair" or any other term of similar import or meaning to designate, describe or refer to the rug cushion now sold by respondents under the name "Ozite," whether sold under that name or any other trade name, unless there appears in immediate connection or conjunction with such a term a complete and equally conspicuous statement disclosing the presence in said cushion of a reinforcing center of burlap or jute.

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.

IN THE MATTER OF
MITCHELL F. BRICE, TRADING AS PARR SALES
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4233. Complaint, Aug. 13, 1940—Decision, Nov. 2, 1940

Where an individual who (1) was president, secretary-treasurer and director of, and owner of a large majority of the stock in a corporation engaged in a general wholesale merchandise business, and which placed orders for a substantial portion of the goods, wares, and merchandise, and particularly food stuffs, required in the ordinary conduct of its business with sellers located mostly in other States, and (2) was co-owner in a brokerage firm in the same city with another to whom, as his employee in various enterprises owned and controlled by him, he paid as compensation for services rendered a substantial amount of the brokerage fees and commissions received by said firm, through which said corporate wholesaler made its purchases aforesaid from sellers in other States mostly—

Accepted and received, through said brokerage firm, as brokerage fees or commissions, certain percentages paid by such sellers on purchases made through firm in question by corporate wholesaler aforesaid, and in which transactions said individual was agent and acted in fact for and in behalf of aforesaid corporate wholesaler:

Held, That in accepting and receiving certain percentages of the sales prices upon purchases of commodities of said corporate wholesaler, in interstate commerce as aforesaid set forth, as brokerage fees or commissions, said individual, in his individual capacity and while trading as member of such brokerage firm, violated provisions of section 2 (c) of Clayton Act, as amended by Robinson-Patman Act.

Mr. J. T. Haslett, for the Commission.

Mr. Duncan Graham, of Vidalia, Ga., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Tanner-Brice Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Vidalia, Ga., is engaged in a general wholesale merchandise business and operates