

Syllabus

IN THE MATTER OF

FOLDING FURNITURE WORKS, INC., ALSO DOING BUSINESS AS COAST TO COAST DISTRIBUTORS AND MANUFACTURERS AND NATIONAL MERCANTILE REPORTERS

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

Docket 4611. Complaint, Oct. 9, 1941—Decision, Mar. 23, 1942

Where a corporation, engaged in manufacture of children's cribs and bassinets; tables, and other furniture, and in interstate sale and distribution thereof from its factory and place of business in Wisconsin, and maintaining an address in Chicago for the receipt and dispatch of mail under the trade names "Coast to Coast Distributors and Manufacturers" and "National Mercantile Reporters"—

(a) Made such typical statements in circulars and by its salesmen as "An Annual Production Capacity of One-Hundred-Thousand Children's Cribs," "The largest manufacturer of low price children's cribs in the world," and the "Largest exclusive manufacturers of children's cribs and beds in the world"; and

(b) Represented that its business was so large and the quantity of its production such as to require warehouses and branch offices which it maintained at convenient locations throughout the United States;

The facts being that its annual production capacity was substantially less than that claimed above, it did not maintain offices at any other place than its Wisconsin place of business, and other representations, above set out, were false;

(c) Represented that "Coast to Coast Distributors and Manufacturers" was separate and distinct from, and in nowise connected with, the business conducted by it under its corporate name; and

(d) Represented that "National Mercantile Reporters" maintained an office and place of business in Chicago, Ill., and branch offices at various other points, preparing accurate reports on paying ability, unpaid accounts, and trade experience, and making collections of mercantile accounts for various manufacturers, and was an independent bona fide collection business in nowise connected with its business;

The facts being that said supposed separate businesses were, as noted above, mere trade names employed by it, the latter, i. e., National Mercantile Reporters, being used by it to force collection on accounts of merchandise shipped on "padded" orders;

(e) Made use of said latter trade name to collect from customers, through use of threats to sue and other intimidation, price of unordered goods which it shipped to them under its practice of "padding" orders by shipping to customers goods greatly in excess of the quantity ordered; advising said customers "under no circumstances to return the shipment or any part thereof as that would only mean an unnecessary expense and which you probably then would not care to assume"; and

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(f) Made use of its trade name "Coast to Coast Distributors & Manufacturers" in securing repeat orders from customers who had had unsatisfactory dealings with it under its corporate name without disclosing to them its identity therewith;

With effect of causing a substantial portion of the purchasing public to believe that such representations were true, and, as a result of such mistaken belief, to purchase its said products; to their injury and that of the public:

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 P. Bramhall*, trial examiner.

Mr. J. R. Phillips, Jr., 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 Folding Furniture Works, Inc., a corporation, also trading as Coast to Coast Distributors and Manufacturers and National Mercantile Reporters, 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, Folding Furniture Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factory, and principal place of business located at Portage and First Streets, Stevens Point, Wis. It also does business under the style and trade name of "Coast to Coast Distributors & Manufacturers," maintaining an address for the receipt and despatch of mail under this name in the Transportation Building, Chicago, Ill., and under the name "National Mercantile Reporters." Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of children's cribs and bassinets, tables, and other furniture. Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its factory and place of business in Stevens Point, Wis., to purchasers thereof and dealers therein located in various States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as aforesaid, and for the purpose of inducing the purchase of its said products, respondent has circulated among prospective purchasers circulars containing representations as to the quality of its said products and the size of its plant and factory. Typical of the statements and representations made by respondent in said circulars and by its salesmen are the following:

LOW-PRICED CHILDREN'S CRIBS

Low-Priced Children's Cribs—is the cry of today. In response to meet the natural demand for QUALITY LOW-PRICED CHILDREN'S CRIBS we especially have built a

MODERN NEW FACTORY

equipped with Up-to-Date Machinery, etc.—The LARGEST of its kind in the world—
With an Annual Production Capacity of over

One-Hundred-Thousand

Children's Cribs

A Lot of Cribs, Isn't It?

The largest manufacturers of low-price children's cribs in the world.

Largest exclusive manufacturers of children's cribs and beds in the world.

Largest exclusive manufacturers of this line in the world.

The largest crib manufacturers in the world.

On its letterheads and stationery the respondent has represented that it maintains offices and warehouses in the following cities: New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; and San Francisco, Calif.; and under its trade name "Coast to Coast Distributors & Manufacturers" it has represented that it maintains offices and warehouses in New York, N. Y., and San Francisco, Calif.

Respondent, in doing business under the name of "National Mercantile Reporters," represents that National Mercantile Reporters is located in Consumers Building, 220 South State Street, Chicago, Ill. On a typical letterhead used by respondent under said name appears the following:

National Mercantile Reporters,

Consumers Building,

220 South State Street,

Chicago, Illinois

Accurate reports on
Paying Ability,
Unpaid Accounts
Trade Experience, Etc.

Collections.

Branch Offices

Please directly reply
to office from which
received.

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PAR. 3. In the manner and by the means aforesaid, respondent represents and implies that it has an annual production capacity of over 100,000 cribs; that it is the largest manufacturer of low-priced children's cribs in the world, the largest exclusive manufacturer of children's cribs and beds in the world, the largest exclusive manufacturer of this line in the world, and the largest crib manufacturer in the world; that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices which it maintains at convenient locations throughout the United States; that Coast to Coast Distributors and Manufacturers is separate and distinct from and in nowise connected with the business conducted by respondent under its corporate name; that National Mercantile Reporters maintains an office and place of business in Chicago, Ill., and branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers; and that National Mercantile Reporters is an independent bona fide collection business in nowise connected with the business of respondent.

PAR. 4. In truth and in fact, the respondent does not have an annual production capacity of over 100,000 cribs, but its annual production capacity is substantially less than that number; it is not the largest manufacturer of low-priced children's cribs in the world, nor the largest exclusive manufacturer of children's cribs and beds in the world, nor the largest exclusive manufacturer of this line in the world, nor is it the largest crib manufacturer in the world; and it does not maintain branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any place other than Stevens Point, Wis. National Mercantile Reporters is not an independent bona fide collection business with a place of business in Chicago, Ill., and branch offices at other points throughout the United States, which prepares accurate reports on paying ability, unpaid accounts, and trade experience, and which makes commercial collections for manufacturers, but is simply a trade name used by respondent in the manner described in paragraph 5 hereof to force collection on accounts of merchandise shipped on "padded" orders.

PAR. 5. The respondent, both under its name Folding Furniture Works, Inc., and under its name Coast to Coast Distributors & Manufacturers, has accepted the practice of "padding" orders received from customers by shipping to such customers goods greatly in excess of the quantity ordered. Respondent attempts to, and does, under

the name National Mercantile Reporters, collect from such customers the price of the unordered goods. In attempting to make and in making such collections, respondent uses threats to sue and other forms of intimidation, advising such customers to retain such unordered goods and "under no circumstances return the shipment or any part thereof, as that would only mean an unnecessary expense and which you probably then would not care to assume."

Respondent has also used its trade name Coast to Coast Distributors & Manufacturers in securing repeat orders from customers who have had unsatisfactory dealings with respondent under its corporate name, without disclosing to such customers the identity of corporate respondent and Coast to Coast Distributors & Manufacturers.

PAR. 6. The use by the respondent of the aforesaid acts, practices, and methods is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true, and that respondent's business and the quantity of its production are much larger than they are in fact; that it maintains and operates branch offices or warehouses at various convenient points throughout the United States; that Coast to Coast Distributors & Manufacturers is in nowise connected with the business of respondent; that National Mercantile Reporters is an independent bona fide collection agency in nowise connected with the business of respondent; that National Mercantile Reporters has a place of business in Chicago, Ill., and maintains branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

As a result of the aforesaid mistaken beliefs, engendered as aforesaid, many members of the purchasing public have purchased respondent's said products in said commerce to their injury and to the injury of the public.

PAR 7. The aforesaid acts and practices of respondent, 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 October 9, 1941, issued and subsequently served its complaint in this proceeding upon respondent Folding Furniture Works, Inc., a corporation, also doing business

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as Coast to Coast Distributors & Manufacturers and National Mercantile Reporters, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 17, 1942, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to 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. Respondent, Folding Furniture Works, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its offices, factory, and principal place of business located at Portage and First Streets, Stevens Point, Wis. It also does business under the style and trade name of Coast to Coast Distributors and Manufacturers, maintaining an address for the receipt and dispatch of mail under this name in the Transportation Building, Chicago, Ill., and under the name National Mercantile Reporters. Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of children's cribs and bassinets, tables, and other furniture. Respondent causes, and at all times mentioned herein has caused, its said products, when sold, to be transported from its factory and place of business in Stevens Point, Wis., to purchasers thereof and dealers therein located in various States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business in said commerce as aforesaid, and for the purpose of inducing the purchase of its said products, respondent has circulated among prospective purchasers circulars containing representations as to the quality of its said products and the size of its plant and factory. Typical of the

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statements and representations made by respondent in said circulars and by its salesmen are the following:

LOW-PRICED CHILDREN'S CRIBS

Low-Priced Children's Cribs—is the cry of today. In response to meet the natural demand for QUALITY LOW-PRICED CHILDREN'S CRIBS we especially have built a

MODERN NEW FACTORY

equipped with Up-to-Date Machinery, etc.—The LARGEST of its kind in the World—With an Annual Production Capacity of over

One-Hundred-Thousand

Children's Cribs

A Lot of Cribs, Isn't It?

The largest manufacturers of low price children's cribs in the world.

Largest exclusive manufacturers of children's cribs and beds in the world.

Largest exclusive manufacturers of this line in the world.

The largest crib manufacturers in the world.

On its letterheads and stationery the respondent has represented that it maintains offices and warehouses in the following cities: New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; and San Francisco, Calif.; and under its trade name, Coast to Coast Distributors & Manufacturers, it has represented that it maintains offices and warehouses in New York, N. Y., and San Francisco, Calif.

Respondent, in doing business under the name of National Mercantile Reporters, represents that National Mercantile Reporters is located in Consumers Building, 220 South State Street, Chicago, Ill. On a typical letterhead used by respondent under said name appears the following:

National Mercantile Reporters,
Consumers Building,
220 South State Street,
Chicago, Illinois

Collections.

Accurate reports on Paying ability,
Unpaid Accounts, Trade
Experience, Etc.

Branch Offices
Please directly reply to office
from which received.

PAR. 3. In the manner and by the means aforesaid, respondent represents and implies that it has an annual production capacity of over 100,000 cribs; that it is the largest manufacturer of low-priced children's cribs in the world, the largest exclusive manufacturer of children's cribs and beds in the world, the largest exclusive manu-

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facturer of this line in the world, and the largest crib manufacturer in the world; that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices which it maintains at convenient locations throughout the United States; that Coast to Coast Distributors and Manufacturers is separate and distinct from and in nowise connected with the business conducted by respondent under its corporate name; that National Mercantile Reporters maintains an office and place of business in Chicago, Ill., and branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers; and that National Mercantile Reporters is an independent bona fide collection business in nowise connected with the business of respondent.

PAR. 4. In truth and in fact, the respondent does not have an annual production capacity of over 100,000 cribs, but its annual production capacity is substantially less than that number; it is not the largest manufacturer of low-priced children's cribs in the world, nor the largest exclusive manufacturer of children's cribs and beds in the world, nor the largest exclusive manufacturer of this line in the world, nor is it the largest crib manufacturer in the world; and it does not maintain branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any place other than Stevens Point, Wis. National Mercantile Reporters is not an independent bona fide collection business with a place of business in Chicago, Ill., and branch offices at other points throughout the United States, which prepares accurate reports on paying ability, unpaid accounts, and trade experience, and which makes commercial collections for manufacturers, but is simply a trade name used by respondent in the manner described in paragraph 5 hereof to force collection on accounts of merchandise shipped on "padded" orders.

PAR. 5. The respondent, both under its name Folding Furniture Works, Inc., and under its name Coast to Coast Distributors & Manufacturers, has adopted the practice of "padding" orders received from customers by shipping to such customers goods greatly in excess of the quantity ordered. Respondent attempts to, and does, under the name National Mercantile Reporters, collect from such customers the price of the unordered goods. In attempting to make and in making such collections, respondent uses threats to sue and other forms of intimidation, advising such customers to retain such unordered goods

and "under no circumstances return the shipment or any part thereof, as that would only mean an unnecessary expense and which you probably then, would not care to assume."

Respondent has also used its trade name Coast to Coast Distributors and Manufacturers in securing repeat orders from customers who have had unsatisfactory dealings with respondent under its corporate name, without disclosing to such customers the identity of corporate respondent and Coast to Coast Distributors and Manufacturers.

PAR. 6. The use by the respondent of the aforesaid acts, practices, and methods is deceptive and misleading and causes a substantial portion of the purchasing public erroneously to believe that said statements and representations are true, and that respondent's business and the quantity of its production are much larger than they are in fact; that it maintains and operates branch offices or warehouses at various convenient points throughout the United States; that Coast to Coast Distributors & Manufacturers is in nowise connected with the business of respondent; that National Mercantile Reporters is an independent bona fide collection agency in nowise connected with the business of respondent; that National Mercantile Reporters has a place of business in Chicago, Ill., and maintains branch offices at various other points, prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

As a result of the aforesaid mistaken beliefs, engendered as aforesaid, many members of the purchasing public have purchased respondent's said products in said commerce to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondent, 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclu-

sion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Folding Furniture Works, Inc., a corporation, also doing business as Coast to Coast Distributors & Manufacturers and as National Mercantile Reporters, and 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 its children's cribs and bassinets, tables, and other furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from.

1. Representing that it is the largest manufacturer of low-priced children's cribs in the world, or the largest exclusive manufacturer of children's cribs and beds in the world, or the largest crib manufacturers in the world, or the largest exclusive manufacturer of this line in the world, or that it has an annual production capacity of over 100,000 cribs, or any other quantity of cribs in excess of its actual annual production capacity.

2. Representing that its business is so large and the quantity of its production such as to require and justify warehouses and branch offices, or that it maintains warehouses and branch offices, at various points throughout the United States.

3. Representing that it maintains branch offices or warehouses in New York, N. Y.; Buffalo, N. Y.; St. Louis, Mo.; Dallas, Tex.; or San Francisco, Calif.; or at any other point, unless such warehouses and branch offices are actually maintained by respondent.

4. Representing that the business conducted under the name Coast to Coast Distributors & Manufacturers is separate and distinct from and not connected with the business conducted under respondent's corporate name, Folding Furniture Works, Inc., or dealing with customers under two or more names without disclosing to such customers that the business operated under the several names used is one and the same.

5. Representing that National Mercantile Reporters is an independent, bona fide collection agency not connected with the business of respondent or that it has a business in Chicago, Ill., which maintains branch offices at various other points, and prepares accurate reports on paying ability, unpaid accounts, and trade experience, and makes collections of mercantile accounts for various manufacturers.

6. Engaging in the practice of "padding" orders received from customers by shipping goods to such customers in excess of the quantity ordered or attempting to collect the price of such unordered goods by threats of suit or other forms of intimidation; or of advising such

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customers to retain such unordered goods because the return thereof will mean unnecessary expense to such customers.

It is further ordered, That the respondent 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
**ASSOCIATED MOTOR OILS, INC., ALSO DOING BUSINESS
UNDER THE NAME OF ASSOCIATED PRODUCTS COM-
PANY**

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

Docket 4621. Complaint, Oct. 31, 1941—Decision, Mar. 23, 1942

Where the distinctive emblem of an Association—dating from 1923 and composed of practically all of the refiners of motor oils produced in the Pennsylvania oil fields and of a number of jobbers and distributors of such oils—featuring the words "Guaranteed 100% Pure Pennsylvania Oil" along with insignia or advertising matter signifying that distributor concerned was a member of the Association, together with the name "Pennsylvania" and derivations thereof, had acquired a definite secondary meaning to the purchasing public when used in connection with motor oils, indicating unadulterated oil produced from the Pennsylvania oil fields; and thereafter, a corporation engaged in blending and canning motor oils and greases, both under its own trade brands and under brands which it packaged for marketers and jobbers, and in competitive interstate sale and distribution of said products—

- (a) Represented that it controlled and operated a refinery, and that purchasers of its products were dealing directly with the manufacturer thereof through use on its labels and in its catalogs and other advertising material of its former corporate name in which were included words "Associated Refineries;"
- (b) Placed on some of its products an emblem bearing the legend "All motor oils bearing this seal Guaranteed 100% pure Pennsylvania Motor Oils. Spec. No. —," which, in size and shape, simulated that of aforesaid Pennsylvania Grade Crude Oil Association, and shared with it as the most conspicuous words the statement "Guaranteed 100% pure Pennsylvania oil," substituting for the words "Permit No. —" on the Association emblem, the meaningless words "Spec. No. —;" and set forth on containers the representation that the contents were "100% pure Pennsylvania Motor Oil," or "Certified 100% pure Pennsylvania Motor Oil;" and
- (c) Made use of abbreviations of words coined from the word "Pennsylvania" in naming some of its motor oils and greases to suggest that they were made entirely from oil derived from the Pennsylvania fields;

Notwithstanding the fact it did not own, operate, or control an oil refinery, or refine and prepare virgin crude oil for use as a motor oil, or have equipment for such purpose, but was engaged solely in blending and canning the products concerned; its said motor oils and greases contained, to a substantial extent, oils and additives from other than the Pennsylvania oil fields, while some contained no Pennsylvania oil whatever; and it was not a member of said Pennsylvania Grade Crude Oil Association, nor entitled to the use of the emblem thereof;

- (d) Placed on its cans and other containers the letters and numbers used by the Society of Automotive Engineers to indicate relative viscosity of motor oils, which, through long usage, had come to have a definite meaning in such connection;