

Syllabus

IN THE MATTER OF
SUPERIOR FELT AND BEDDING COMPANY

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

Docket 4309. Complaint, Sept. 10, 1940—Decision, Apr. 6, 1942

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of mattresses to retailers for resale to purchasing public—

- (a) Represented that certain of its mattresses were designed, sponsored, approved or recommended by physicians, and were in general use in hospitals, through use on labels attached thereto of such statements as "General Hospital Mattress," "Rx Just what the doctor ordered," together with outline of a red cross, and "Rx The Hospital Mattress" and picture of a doctor in uniform;

The facts being that its mattresses were not in general use in hospitals, or of a type peculiar to and generally used in hospitals, or "just what the doctor ordered," or endorsed, approved or recommended by doctors;

- (b) Represented that its said mattresses were so designed and constructed as to be capable of building a correct posture and correcting posture defects, through use of such statements on labels applied thereto as "Built Up Center—Posture Builder—Scientific Construction" and "Scientifically Posturized—Built up Center—Innerspring Construction";

The facts being there is no relationship between the positions assumed in sleep and a person's waking posture or carriage, nor any such relationship between such posture and the type of innerspring mattress on which one may sleep; and its said mattresses have no ability to, and will not, correct defects in the posture or carriage of the user, or "build" posture, either good or bad; and

- (c) Misrepresented retail price of its mattresses through placing on tags or labels attached thereto prices which were purely fictitious and greatly in excess of the retail value and customary prices at which said products were sold to the purchasing public, and thereby placed in the hands of department stores and other retailers means whereby they might mislead and deceive the purchasing public, a typical act consisting of selling a department store a 100-lot of mattresses of the same quality at \$12.95 each, less discount, which it labeled with various names and price marks, including "Golden Rest," \$39.50; "Cinderella," \$39.50; "Dream Ship," \$49.50; "Mammoth DeLuxe," \$44.50; and "Splendor," \$39.50; which were resold by said store, together with certain others purchased by it at \$10.75 each, less cash discount, at \$19.95, and in no case at the prices marked thereon by it; said store advertising in connection with said sale "It's your chance to save \$9.80 to \$19.55 and get the benefit of in-built comfort in Mattresses that are quality built * * *! Choose early";

With effect of misleading and deceiving a substantial portion of purchasing public into the mistaken belief that said mattresses possessed qualities which they did not possess, and customarily sold for prices for which they did not sell, thereby inducing said public to purchase substantial quantities of said mattresses, with result that trade was unfairly diverted to it from its competitors, and injury done by it to competition in commerce:

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

Complaint

34 F. T. C.

methods of competition in commerce, and unfair and deceptive acts and practices therein.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. Charles S. Cox and *Mr. Maurice C. Pearce* for the Commission.

Mr. Samuel J. Winograd, of Chicago, Ill., 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 Superior Felt and Bedding Co., 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, Superior Felt and Bedding Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, and having its principal office and place of business at 2447 Roosevelt Road, Chicago, Ill. Respondent also maintains branch factories or warehouses in New York; Dallas, Tex.; Kansas City, Mo.; Columbus, Ohio; Cleveland, Ohio; DeKalb, Ill.; Detroit, Mich.; and Pittsburgh, Pa.

PAR. 2. Respondent is now and for more than 4 years last past has been engaged in manufacturing, selling and distributing mattresses. Respondent causes its said mattresses, when sold by it, to be transported from its place of business in Chicago, Ill., or from its other factories or warehouses, to purchasers thereof located in the various States of the United States other than the points of origin of the shipments, and in the District of Columbia. Respondent's said mattresses are sold to retailers, who, in turn, resell the same to members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said mattresses in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its said products, respondent, through its salesmen and by means of circulars, labels, and other ad-

1021

Complaint

vertising material distributed among prospective purchasers, has made many statements and representations to the purchasing public concerning certain of its products. Among and typical of said statements and representations so disseminated are the following, which appear on the labels attached to certain of said mattresses:

POSTURE BUILDER

Copyright

SCIENTIFIC CONSTRUCTION

* * * *

R

(Picture of doctor in uniform)

THE
HOSPITAL
MATTRESS

S

A

N

I

A. C. A. TICKING

I

Z

E

D

SANITARY COMFORT

THE
GENERAL
HOSPITAL
MATTRESS

R "Just what the doctor ordered"

(Set out
in
cross
outlined
in red)

(Cross
Outlined
In Red)

SCIENTIFICALLY
POSTURIZED

Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents and has represented that said mattresses are designed, sponsored, approved or recommended by physicians; that they are in general use in hospitals; that said mattress designated as "Posture Builder" is so designed and constructed that it is capable of building a correct posture and correcting defects in the posture. The symbol R and the red cross have for many years been associated in the mind of the public with medical treatment and service, and the use by the respondent of these symbols as a part of its said labels has the effect of accentuating the other representations appearing on said labels.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact none of the respondent's mattresses have been designed, sponsored, approved or recommended by physicians, nor are they in general use in hospitals. The mattresses designated as "Posture Builder" is wholly incapable of building a correct posture or correcting any defects in the posture.

PAR. 6. In addition to the practices set forth above, the respondent has heretofore engaged in the practice of attaching to its mattresses tags or labels bearing price marks purporting to represent the customary resale or retail prices of such mattresses, when in fact such prices were fictitious and were far in excess of the prices at which such mattresses were regularly sold at retail. Among and typical of such price marks was the mark "\$39.50" appearing on certain mattresses which were intended by the respondent to sell, and did sell, at retail in the usual and regular course of business for approximately \$20.

Such practice on the part of respondent had the further effect of placing in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers were enabled to mislead and deceive the purchasing public as to the quality of said mattresses, and as to the savings to be effected in the purchase thereof.

PAR. 7. The acts and practices of the respondent as herein set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent's products possess characteristics and qualities which they do not in fact possess, and that such products customarily sell for certain specified prices when such is not the fact. As a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to and has purchased substantial quantities of respondent's products. In consequence, trade has been diverted to the respondents from its competitors, and thereby substantial injury has been done and is being done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and 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 September 10, 1940, issued and

subsequently served its complaint in this proceeding upon respondent Superior Felt and Bedding Co., a corporation, charging it with the use of unfair methods of competition in commerce and 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 respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before 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 said complaint, the answer thereto, testimony and other evidence, briefs in support of and in opposition to the complaint, and oral arguments by counsel; 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, Superior Felt and Bedding Co., is a corporation organized, existing, and doing business, under and by virtue of the laws of the State of Delaware and having its principal office and place of business at 2447 Roosevelt Road, Chicago, Ill. Respondent maintains branch factories or warehouses in New York, N. Y.; Dallas, Tex.; Kansas City, Mo.; Columbus, Ohio; Cleveland, Ohio; DeKalb, Ill.; Detroit, Mich.; and Pittsburgh, Pa.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing mattresses. Respondent causes its said mattresses, when sold, to be transported from its place of business in Chicago, Ill., or from its other factories or warehouses, to purchasers thereof in various States of the United States other than the points of origin of such shipments and in the District of Columbia. Respondent's said mattresses are sold to retailers who, in turn, resell the same to members of the purchasing public. Respondent maintains, and for a number of years last past has maintained, a course of trade in its said mattresses in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business respondent is, and has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of similar products

Findings

34 F. T. C.

in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its mattresses respondent, through its salesmen and by means of circulars, labels, and other advertising material distributed among purchasers and prospective purchasers, has made various statements and representations concerning certain of its mattresses. Among and typical of the statements and representations so made are the following, which appear on labels attached to certain of said mattresses:

Built Up Center
POSTURE BUILDER
Scientific Construction
* * * * *
THE GENERAL
HOSPITAL
MATTRESS

B "Just what the doctor ordered"

Outline of
a red cross

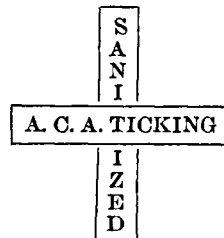
SCIENTIFICALLY
POSTURIZED
Built Up Center
Innerspring Construction
* * * * *

B

THE
HOSPITAL
MATTRESS

\$29.50

Picture of doctor in uniform



Through the use of the foregoing statements respondent represents, and has represented, that its said mattresses are designed, sponsored, approved, or recommended by physicians and that they are in general use in hospitals; and, further, that the mattresses designated as "Posture Builder" are so designed and constructed as to be capable of building a correct posture and correcting defects in the posture of users.

PAR. 4. A number of years ago Dr. Norman D. Mattison advanced the idea of building a mattress with innerspring construction having varying degrees of spring resistance at the head, center section, and foot of the mattress proportioned to the approximate variations in weight between the head and shoulders, the torso and hips, and the feet and lower legs of an average individual. Doctor Mattison arranged with the Owen Silent Spring Co., Inc., to produce and offer such a spring for the use of bedding manufacturers in the construction of innerspring mattresses. Doctor Mattison was unable to secure a patent on this spring construction and other spring manufacturers began the manufacture of innersprings for mattresses based at least partially upon the general conception of the Mattison spring but varying in different features, including the degrees of resistance to spring deflection in various sections of the mattress.

The respondent purchased the springs used in its "Posture Builder" mattresses from the Nachman Spring Filled Corporation and from other spring manufacturers, including the Owen Silent Spring Co. The only innerspring construction endorsed, approved, or recommended by Doctor Mattison is that produced by the Owen Silent Spring Co., which bears the "Mattison" label. Respondent's mattresses do not comply with these requirements and are not endorsed, approved, or recommended by Doctor Mattison or any other physician.

The broad meaning of the term "posture" is any position assumed by a person, but the term is more generally used to indicate the carriage of a person in walking, standing, or sitting. In sleeping, a person assumes many different positions but seldom remains more than a few minutes in any one position. When asleep, a person's muscles are relaxed and generally the elbow, thigh, and knee joints slightly flexed. There is no relationship between the several positions assumed in sleep and the waking posture or carriage of an individual, nor is there any relationship between waking posture and the type of innerspring mattress on which an individual may sleep. Respondent's mattresses have no ability to, and will not, affect the waking posture or carriage of the user, correct defects in posture or carriage, or "build" posture, either good or bad. Bad posture may be due to physical defects, carelessness, laziness, and other causes, and is not subject to correction through the use of respondent's so-called "Posture Builder" mattresses.

Respondent's "Hospital" and "General Hospital" mattresses are not in general use in hospitals, nor are they of a type peculiar to and generally used in hospitals. They are not "Just what the doctor ordered," nor have they been, or are they, endorsed, approved, or recommended by hospitals, doctors, or the medical profession.

Findings

34 F. T. C.

PAR. 5. The respondent has attached to its mattresses tags or labels bearing price marks purporting to represent the retail value and price of such mattresses and the usual and customary retail prices thereof. The prices set forth on many of these tags and labels attached to respondent's mattresses have had no relation to the retail value thereof or usual and customary retail prices of such mattresses, and have been purely fictitious.

Respondent designates its mattresses by various names such as "King-O-Rest" and "Rest Queen." The designation "King-O-Rest" is used to identify a particular quality of mattress. On May 4, 1938, respondent sold 100 of its "King-O-Rest" quality mattresses to the Elder & Johnston Co., a department store in Dayton, Ohio, at a price of \$12.95 each, less 2 percent for cash. These mattresses were labeled by respondent with various names and price marks, including "Golden Rest," \$39.50; "Cinderella," \$39.50; "Dream Ship," \$49.50; "Mammoth Deluxe," \$44.50; and "Splendor," \$39.50. Subsequently, the Elder & Johnston Co. bought from respondent additional mattresses invoiced to it as "experimental" mattresses at a price of \$10.75 each, less 2 percent for cash. The mattresses purchased from respondent were advertised by the Elder & Johnston Co. for sale at a price of \$19.95 each. One such advertisement referred to respondent's price marks and stated in part:

It's a super special buy in high grade INNERSPRING MATTRESSES! It's your chance to save \$9.80 to \$19.55 and get the benefit of in-built comfort in Mattresses that are quality built to Elder's specifications! Choose early!

These mattresses were, in fact, sold by the Elder & Johnston Co. at \$19.95 and none were sold at the prices marked on the labels affixed by respondent to such mattresses.

Late in 1937 respondent sold more than 100 mattresses of its "King-O-Rest" quality to Gimbel Brothers in Milwaukee, Wis., at a price of \$13.36 each, less 5 percent for cash, which mattresses were price-marked by respondent at \$39.50. These mattresses were advertised by Gimbel Brothers in part as follows:

Phenomenal Purchase!

"KING-O-REST"

\$39.50 Innerspring

MATTRESSES

Covered with the Finest Imported Damask Ever Shown on a Mattress

No one would think it possible—but Gimbels did it! Every mattress carries the maker's price label, \$39.50----- \$22.95

Numbers of the mattresses in question were sold by Gimbel Bros. at \$22.95, and as to those that may not have been sold pursuant to this

1021

Order

advertisement it was not possible to determine whether they were also sold at \$22.95 or at some other price.

Respondent's mattresses were also sold by Michaels Bros. of Brooklyn, N. Y., pursuant to an advertisement which was in part as follows:

The "King-O-Rest" Innerspring Mattress Covered in an Imported Belgian Table Panel Damask

HALF-PRICE at..... \$18.95

One that will assure you of perfect rest during the coming year. The manufacturer set the price of \$39.50 for this mattress and that is the price on the label. As a feature of our Sale, we are presenting the FAMOUS KING-O-REST at less than HALF PRICE.....

The Commission concludes that many of the price markings placed on its mattresses by respondent are arbitrary and fictitious in that they are greatly in excess of the retail value and prices at which such mattresses are generally sold to the purchasing public, and that such fictitious price markings place in the hands of department stores and other retail dealers a means whereby they may mislead and deceive the purchasing public.

PAR. 6. The acts and practices of respondent as herein set forth have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's mattresses possess characteristics and qualities which they do not in fact possess, and that such products customarily sell for certain specified prices when they do not in fact sell for such prices. As a result of such erroneous and mistaken belief the purchasing public has been induced to, and has, purchased substantial quantities of respondent's mattresses. In consequence, trade has been diverted to respondent from its competitors and thereby substantial injury has been done, and is being done, by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 in support of and in opposition to the

complaint taken before an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by counsel, 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 respondent Superior Felt and Bedding Company, 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 mattresses and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by the use of fictitious price marks, or in any other manner, that mattresses or other products have retail values or prices in excess of the prices at which such products are regularly and customarily sold at retail.

2. Using on or in connection with mattresses or other products fictitious price representations or marks which represent or imply, or placing in the hands of others such means of representing, that the retail value or price of mattresses or other products is in excess of the price at which such mattresses or other products are regularly and customarily sold at retail.

3. Representing by the use of the words "Posture Builder," or any other word or words of similar import or meaning, or in any other manner, that respondent's mattresses affect the posture, correct or assist in correcting defects of posture, or improve the posture of the user of such mattresses.

4. Using the term "Hospital Mattress" or "General Hospital Mattress," either separately or accompanied by the symbol "H" or a red cross, to designate, describe, or refer to mattresses not in general use in hospitals; or otherwise representing in any manner that such mattresses are in general use in hospitals.

5. Using the term "Just what the doctor ordered," or the symbol "H," or a picture of a doctor, or a red cross, either separately or together, to designate, describe, or refer to mattresses not designed, sponsored, approved, or recommended by members of the medical profession; or otherwise representing in any manner that such mattresses have been designed, sponsored, approved, or recommended by members of the medical profession.

It is further ordered, That the respondent shall, within 60 days after the 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.

Syllabus

IN THE MATTER OF

PHILIP JABLON, TRADING AS BELL YARN COMPANY
AND WONOCO YARN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4326. Complaint, Oct. 2, 1940—Decision, Apr. 6, 1942*

Where an individual, engaged in interstate sale and distribution of hand knitting yarn, to retail dealers and also direct to the purchasing public; on color cards containing samples of the various types and grades offered, distributed among prospective purchasers, and on labels and tags attached to the yarns themselves—

- (a) Made use of names (1) "Cashmere Sport" and "Imported Cashmere Blend," and (2) "Zephyr Tweed DeLuxe," "Mystic Tweed Crepe" and "Paisley Tweed" to describe certain of his products; notwithstanding the fact said yarns were, respectively, not made entirely from the hair of the cashmere goat, or composed entirely of wool as denoted by word "tweed," but said "Cashmere Sport" was composed wholly of other wool than cashmere, and "Cashmere Blend" contained substantial percentages of other materials; said "Paisley Tweed" was entirely rayon and the others, while composed principally of wool, contained substantial percentages of rayon;
- (b) Made use of word "wool" to designate certain of his yarns, as "Luster Wool" and "Wool Flake," and of word "Angora" and simulation thereof, "Angoray"; notwithstanding said "wool" yarns were not composed entirely of wool but contained large percentages of rayon, while neither of said "Angora" products contained hair of the Angora goat, but were composed entirely of other materials;
- (c) Made use of words "Luster Shetland" and "Shetland Floss," and "Genuine Camel Hair" to designate certain yarns; notwithstanding fact former yarns contained none of the wool—as understood by a substantial portion of the purchasing public—made from sheep grown on the Shetland Islands or on the contiguous mainland of Scotland; while others contained no Camel hair;
- (d) Made use of word "crepe" to designate certain products as "Pebble Crepe" and "Speckle Crepe"; notwithstanding fact said yarns were not, as long understood by public from such unqualified use of word "crepe," made entirely of silk, product of the cocoon of the silk worm, but were composed of a mixture of wool and rayon, or cotton and rayon, and contained no silk;
- (e) Made use of word "Saxony" to designate certain products; when neither yarns thus designated nor wool used therein were imported from the Province of Saxony, as implied;
- (f) Advertised and sold various yarns composed in whole or in part of rayon, but with appearance of wool or wool and silk without disclosing content of rayon which, when made to simulate silk or wool, is practically indistinguishable by purchasing public therefrom; with result that the public purchased such yarns as being entirely wool, or wool and silk; and