

IN THE MATTER OF
NORFOLK MATTRESS COMPANY, INC.

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

Docket 4488. Complaint, Apr. 16, 1941—Decision, Sept. 14, 1942

Where a corporation, engaged in the manufacture and interstate sale of mattresses, pillows, bedsprings, and studio couches—

Branded and labeled its said products "Dr. Ezera Storm" or "Dr. Ezera Storm's" and made use of such designation in referring collectively thereto in catalogs and on display cards which it furnished to the retail trade for distribution among the purchasing public, where it also described them as "Dr. Ezera Storm's Supreme Quality Sleep Products," and made such statements as "Dr. Ezera Storm's Sleep Products are built for better sleep * * * provide nerve-soothing, body relaxing comfort from a health standpoint," "You get correct back support, and good seating comfort with the Dr. Storm Sleep Sofa," and "In the Dr. Storm line you get * * * the advantages of products designed from a 'Health and family welfare' standpoint," etc.;

The facts being there had never been a "Dr. Ezera Storm" or "Dr. Storm" who originated, designed, or supervised the construction of, or furnished scientific advice or services in connection with, the design or construction of said products; the name was merely a trade name coined by it or its predecessor; and, except for the fact that certain of the ticking used by it was purchased from a textile manufacturer who treated it to a process—said to make it resistant to germ and bacteria growth—developed by a doctor connected with a third concern which apparently licensed use thereof by textile manufacturers, no connection of any doctor with any materials used by it in its manufacture was shown;

With effect of causing a substantial portion of the purchasing public to believe that said products had been designed, approved, or recommended by a doctor, whereby, because of such mistaken belief, it purchased substantial quantities of such 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. Andrew B. Duvall*, trial examiner.

Mr. Morton Nesmith and *Mr. Carrel F. Rhodes* for the Commission.

Broudy & Broudy, of Norfolk, Va., 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 the Norfolk Mat-

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tress Co., Inc., 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. The respondent, Norfolk Mattress Co., Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Norfolk, State of Virginia.

Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of mattresses, springs, pillows, and studio couches which it brands and labels as "Dr. Ezera Storm," in commerce between and among the several States of the United States, and in the District of Columbia.

Said respondent being engaged in the business, as aforesaid, caused and still causes said products, when sold, to be transported from its principal place of business in the city of Norfolk, in the State of Virginia, to purchasers thereof located in States of the United States other than the State of Virginia, and in the District of Columbia. For several years last past said respondent has maintained a course of trade in the aforesaid products so manufactured, sold, and distributed by it in commerce between and among the several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business, and for the purpose of inducing the purchase of its products, the respondent has furnished advertising matter, such as catalogs and display cards, to its retail trade, who in turn distribute such advertising matter among the purchasing public generally. In all of such advertising literature respondent's products are collectively referred to as "Dr. Ezera Storm's Supreme Quality Sleep Products." The mattress is designated as "Dr. Ezera Storm's Tru-Rest"; the springs as "Dr. Storm's Coil Springs"; the couch as "Dr. Ezera Storm's Studio Couch"; and the pillows as "Dr. Ezera Storm's Pillows."

PAR. 3. Through the use of the term "Dr." as part of the collective name for its aforesaid products and as part of the trade name for each of said products, the respondent has represented, either directly or through implication, that such products were made in accordance with the design of, or under the supervision of, a doctor, and has further represented, either directly or by implication, that such products contain special or scientific features which are the result of medical advice or services.

PAR. 4. In truth and in fact the mattresses, springs, studio couches, and pillows which are labeled, branded, and advertised with the

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name "Dr. Ezera Storm" were not made in accordance with the design of or under the supervision of a doctor, and do not contain special or scientific features which are the result of medical advice or services.

PAR. 5. The acts and practices of the respondent as herein detailed have a tendency and capacity to mislead its own retail customers, and also many consumer purchasers into the mistaken and erroneous belief that such products have been designed and constructed by doctors or others with a special or scientific knowledge, and by reason thereof possess features not common to the ordinary mattresses, springs, couches, and pillows. In consequence of such mistaken and erroneous belief, a substantial number of the purchasing public have purchased respondent's aforesaid products.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices 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 April 16, 1941, issued and subsequently served its complaint in this proceeding on respondent, Norfolk Mattress Co., Inc., a corporation, charging it 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 respondent's answer thereto, testimony, and other evidence in support of and in opposition to the allegations of the 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 the said complaint, the answer thereto, testimony, and other evidence, report of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (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. Respondent, Norfolk Mattress Co., Inc., is a corporation, organized, existing, and doing business under and by virtue

of the law of the State of Virginia, with its principal office and place of business in Norfolk, Va. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of mattresses, pillows, bedsprings, and studio couches which it brands or labels "Dr. Ezera Storm" or "Dr. Ezera Storm's."

PAR. 2. Respondent has caused, and causes, the aforesaid products, when sold, to be transported from its place of business in Norfolk, Va., to purchasers thereof located in States of the United States other than the State of Virginia and in the District of Columbia, and respondent has maintained and maintains, a course of trade in said products in commerce between and among the several 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 said products, respondent has furnished advertising matter such as catalogs and display cards to its retail trade, which catalogs and display card are in turn distributed among members of the purchasing public. In such advertising literature respondent's products are collectively referred to, designated, or described as "Dr. Ezera Storm's Supreme Quality Sleep Products" and are individually labeled, referred to, or described as "Dr. Ezera Storm" mattresses, "Dr. Ezera Storm's Tru-Rest" mattresses, "Dr. Ezera Storm's Sunset" mattresses, "Dr. Ezera Storm" pillows, "Dr. Storm Coil Spring," and "Dr. Ezera Storm's" studio couches.

In its advertising pamphlets and material respondent has used, and uses, statements such as:

Dr. Ezera Storm Sleep Products are built for better sleep. They are honest products, built to provide nerve-soothing, body-relaxing comfort from a health standpoint.

* * * * *

Few people realize the tremendous importance of "good sleep" in relation to physical and mental health. The four essentials of life, in the order of their importance are Air, Sleep, Water and Food.

Men have gone 70 days without food, but without sleep, insanity comes in five days and death in seven. The mattress, and its foundation, the bed spring, are the tools given to men to assist Nature in nightly rebuilding your body. The quality of sleep regulates the clearness with which you think, and determines the efficiency with which you work.

* * * * *

You get correct back support, and good seating comfort with the Dr. Storm Sleep Sofa.

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For twenty-seven years, Dr. Ezera Storm Sleep Products have represented maximum value to the purchaser, so in the Dr. Storm line you get not only the advantages of products designed from a "health and family welfare" standpoint, but you also get these products at no premium in price over ordinary sleep equipment.

PAR. 4. There is not now, and never has been, a "Dr. Ezera Storm" or a "Dr. Storm" who originated, designed, or supervised the construction of respondent's said products or who furnished scientific advice or services in connection with the design or construction of respondent's products. The name "Dr. Ezera Storm" is merely a trade name coined by respondent corporation or its predecessors for use on or in connection with its aforesaid products, and neither the respondent nor its predecessors, corporate or individual, knew or had in their employ or as a stockholder or other party in interest, any person by the name of Dr. Ezera Storm.

Certain of the ticking used by respondent in the manufacture of some of its products is purchased from a textile manufacturer and is by that manufacturer treated by a process said to make it resistant to germ and bacteria growth, this process being one developed by a doctor connected with a third concern which apparently licenses textile manufacturers to use such process. No connection of any doctor with the design or manufacture of respondent's products has been shown; and, except to the extent above stated, no connection of any doctor with any materials used by respondent in the manufacture of its products has been shown.

PAR. 5. The respondent introduced the testimony of certain furniture dealers, an interior decorator, and managers of apartments or rooming houses (most of whom were and had been well acquainted with respondent and its business over a long period of years) to the general effect that the use by respondent of the name "Dr. Ezera Storm" in its labels on and descriptions of its products did not mean to them that such products were designed or approved by a doctor, and that they considered the designation "Dr. Ezera Storm" merely as the trade name of respondent for its products. The respondent also made proffers of proof by some of its dealer witnesses (which proffers have been given full consideration in this proceeding) that in the course of selling respondent's products to members of the consuming public they had not found that the designation "Dr. Ezera Storm" caused members of the purchasing public to believe that respondent's products were designed or approved by a doctor.

The Commission finds, however, from the testimony of consumer witnesses, that the various "Dr. Ezera Storm" and "Dr. Ezera Storm's" labels on and designations of respondent's products have the capacity and tendency to, and do, in fact cause a substantial por-

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tion of the purchasing public to believe that respondent's products have been designed, approved, or recommended by a doctor.

In consequence of such mistaken and erroneous belief, engendered as aforesaid, a substantial number of members of the purchasing public have purchased respondent's said products.

CONCLUSION

The aforesaid acts and practices of respondent 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 respondent, testimony in support of and in opposition to the allegations of the complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, and briefs filed herein, 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 the respondent, Norfolk Mattress Co., Inc., 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, pillows, bedsprings, couches, and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the word "Doctor," or the abbreviation "Dr.," or any simulation thereof, either alone or in connection with any other word or words, to designate, describe, or refer to any mattresses, pillows, bedsprings, couches or other products not designed, approved, or recommended by a doctor; or otherwise representing in any manner that any product not designed, approved, or recommended by a doctor has been designed, approved, or recommended by a doctor.

It is further ordered, That 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.

IN THE MATTER OF

UNIFORM MANUFACTURERS EXCHANGE, INC., ITS OFFICERS, BOARD OF DIRECTORS, AND MEMBERS, ET AL.

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

Docket 4712. Complaint, Feb. 25, 1942—Decision, Sept. 15, 1942

Where 23 concerns, engaged in the manufacture, sale, and distribution of uniforms, overcoats and other apparel commonly worn by doormen, bellboys, porters, chauffeurs, and others similarly employed, but excepting policemen and firemen; doing a substantial portion of all business of the industry concerned, particularly in the metropolitan area of New York City, and in competition with one another and with others, except insofar as competition had been lessened or restrained and potential competition forestalled by the acts, practices and policies below set forth; along with their incorporated Exchange or trade association, and the officers and directors thereof—

Entered into and carried out agreements, understandings and conspiracies among themselves to suppress competition in the manufacture, sale and delivery of their products; and in pursuance thereof—

- (a) Organized their said Exchange to control and regulate their business, and thereafter adopted and maintained a cost guide and Manual to govern manufacture and distribution of their said uniforms which (1) required that the price of cloth in any garment made by them should be figured at the market or replacement cost and not at the cost to the purchaser; (2) fixed a standard shrunk net yardage scale for their various products; an average cutting cost; material cost for trimmings, findings, sewings, fronts, pockets, and linings; standard labor costs in detail; minimum overhead costs; and selling terms; and (3) required a member who bid below said Manual cost to submit a revised bid at least 5 percent higher than his original bid;
- (b) Reported to their said Exchange the names of all members who failed to abide by the overhead charges and other items covered by said Manual and by the rules and regulations of the Exchange; and set up and maintained an Arbitration Board or Committee as a disciplinary and punitive agency to enforce the provisions of said Manual, with authority to impose fines, suspend and expel members who failed or refused to comply with the rules and regulations of said Exchange, and otherwise to enforce the same, subject only to the review of a Chairman whose decision was final; and, for that purpose, allowed the examination of the books and records of the respective members by said Committee; and
- (c) Made use of other means to suppress and restrain competition among their members, and through said arbitrary fixing of costs and conditions of sale by their Manual, as above described, and their adherence thereto, fixed minimum prices and terms at which their uniforms and garments were to be sold, with tendency and effect of fixing and regulating prices for such merchandise;