

Complaint

39 F. T. C.

IN THE MATTER OF
SUPERBILT MANUFACTURING 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 4944. Complaint, Apr. 16, 1943—Decision, Nov. 28, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of furniture, mattresses, box springs and like products to retailers and others—

- (a) Represented that its "Super Rest Mattresses and Matching Box Springs" were customarily sold by retail dealers for \$39.50 each in the usual course of business through such advertisements in newspapers and otherwise as "We Join Superbilt in This Special Introductory Offer A Challenge Value! \$39.50 Super Rest Mattress \$39.50 Matching Box Springs Both for \$39.50 Featuring the New Super Rest Quilted-Top Tuftless Inner Spring Mattress," which were also placed in newspapers by retail store purchasers of said products, and in the payment for which it participated;

Notwithstanding the fact that its "Special Introductory Offer" of said merchandise was the first time said Super Rest mattress and matching box springs had been placed on the market and there was no established retail market price of \$39.50 each for said articles at that time; the sum of \$39.50 had been the usual and customary retail selling price for both of said articles combined as one sale at all times subsequent to their introduction in the year 1940; and stated price of \$39.50 each, as set out in the advertisement, was in fact a fictitious price and was greatly in excess of the actual retail price, as stated above; and

- (b) Through use of such practices, placed in the hands of dealers a means and instrumentality whereby they were enabled to mislead and deceive the purchasing public as to the regular retail price and value of its said products;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of its said products as a result of such erroneous belief:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Clark Nichols for the Commission.

Mr. Arthur A. Tarlow and *Bischoff & Bischoff*, of Portland, Ore., 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 Superbilt Manufacturing Co., Inc., a corporation, hereinafter referred to as the 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, Superbilt Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 2511 N. E. Holladay Street, Portland, Oreg.

Said respondent is now, and for more than three years last past has been, engaged in the manufacture of furniture, mattresses, box springs and like products, and in the sale and distribution of the same to retailers and others located in the various States of the United States other than the State of origin.

Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of Oregon to the purchasers thereof located in various other 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 between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its said products, respondent caused to be published in newspapers and by other means advertisements circulated among prospective purchasers in various of the several States of the United States, which advertisements, among others, read in part as follows:

We Join Superbilt in This Special Introductory Offer

A Challenge Value!

\$39.50 Superest Mattress

\$39.50 Matching Box Spring

Both for \$39.50

Featuring the New Superest Quilted-Top Tuftless Innerspring Mattress.

The name of the respective retailer or dealer was inserted at the bottom of said advertisement, and respondent required its retailers to publish said advertisement in the manner and form as above set out and participated and cooperated in the payment of the costs of said publication.

Through the use of the aforesaid statements, respondent represented, that its Superest Mattress and Matching Box Spring are customarily sold by retail dealers for the sum of \$39.50 each, in the usual course of business.

PAR. 3. In truth and in fact, respondent's Superest Mattress and Matching Box Spring had not at the time said representations were made sold for the sum of \$39.50 each by retail dealers in the usual course of business. Respondent's "special introductory offer" of said merchandise was the first time said Superest Mattress and Matching Box Spring had been placed on the market, and there was no established retail market price of \$39.50 each for said articles at that time, nor has the price of \$39.50 each been established subsequently thereto as the usual and customary selling price thereof at retail. In fact, the sum of \$39.50 is and has been the usual and customary retail selling price for both said articles at all times subsequent to their introduction in the year 1940, and neither of said articles, except in isolated instances, has been sold separately at \$39.50 or any sum near that amount.

The stated prices of \$39.50 each, as set out in the advertisement caused to be published as aforesaid, were in fact fictitious prices, and were greatly in excess of the retail prices at which such mattresses and box springs have been customarily sold by retail dealers in the usual and normal course of business. Furthermore, the fair retail values of said mattresses and box springs were considerably less than the sum of \$39.50 each, and said articles of furniture were not reasonably worth at retail the sum of \$39.50 each as represented.

PAR. 4. By the practices, hereinbefore set out, respondent has placed in the hands of dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public as to the regular value and retail price of respondent's Superest Mattresses and Matching Box Springs.

PAR. 5. The use by the respondent of the practices, hereinabove set forth, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's mattresses and box springs as a result of such erroneous belief.

PAR. 6. 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 April 16, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Superbilt Manufacturing Company, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Subsequently the respondent filed its answer, in which answer it admitted all of 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 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, Superbilt Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located at 2511 Northeast Holladay Street, Portland, Oreg. Respondent is now and for several years last past has been engaged in the manufacture of furniture, mattresses, box springs and like products and in the sale and dis-

tribution of same to retailers and others located in the various States of the United States other than the State of Oregon. Respondent causes and has caused its said products, when sold, to be transported from its place of business in the State of Oregon to the purchasers thereof located in the various other States of the United States and in the District of Columbia.

There is now, and has been for some time past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its products, respondent caused to be published in newspapers, and by other means, advertisements which were circulated among prospective purchasers in various of the several States of the United States, and which read in part as follows:

We Join Superbilt in This Special Introductory Offer

A Challenge Value!

\$39.50 Super Rest Mattress

\$39.50 Matching Box Springs

Both for \$39.50

Featuring the New Super Rest Quilted-Top Tuftless

Inner Spring Mattress

These advertisements and others of similar import were placed in newspapers by retail stores who had purchased the Super Rest mattress and box springs from the respondent, and respondent participated and cooperated in the payment of the costs of such publication. Through the use of the aforesaid statements respondent represented that its Super Rest mattress and its matching box springs were customarily sold by retail dealers for the sum of \$39.50 each, in the usual course of business.

PAR. 3. Respondent's Super Rest mattress and its matching box springs had not at the time said representations were made sold for the sum of \$39.50 each by retail dealers in the usual course of business. Respondent's "Special Introductory Offer" of said merchandise was the first time said Super Rest mattress and matching box springs had been placed on the market and there was no established retail market price of \$39.50 each for said articles at that time, nor was the price of \$39.50 each established subsequently thereto as the usual and customary selling price thereof at retail. In fact, the sum of \$39.50 has been the usual and customary retail selling price for both of said articles combined as one sale at all times subsequent to their introduction in the year 1940, and neither of said articles, except in isolated instances, has been sold separately for \$39.50 or for any sum closely approximating that amount. The stated price of \$39.50 each, as set out in the advertisement, was in fact a fictitious price and was greatly in excess of the retail price at which such mattress and box springs have been customarily sold by retail dealers in the usual and normal course of business.

PAR. 4. Through the use of these practices, respondent has placed in the hands of dealers, a means and instrumentality, whereby such dealers are enabled to mislead and deceive the purchasing public as to the regular retail price and value of respondent's Super Rest mattress and matching box springs.

PAR. 5. The use by the respondent of these practices, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's products as a result of such erroneous belief.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Superbilt Manufacturing Co., Inc., a corporation, 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 respondent's mattresses, box springs, and other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the usual or customary retail prices or values of respondent's products, prices or values which are in excess of the prices at which such products are customarily sold at retail.

2. Representing, directly or by implication, that the prices at which respondent's products are offered for sale at retail are reduced or special or introductory prices, when such prices are in fact the usual and customary retail prices of such products.

3. Cooperating or participating with dealers in disseminating any advertisement containing any representation prohibited by this order.

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,

Complaint

IN THE MATTER OF
IMPERIAL CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5046. Complaint, Sept. 11, 1943—Decision, Nov. 29, 1944*

Where a corporation engaged in the competitive interstate sale and distribution of certain assortments of peanuts so packed and assembled as to involve the use of games of chance, gift enterprises or lottery schemes when sold and distributed to the consumer—typical assortments including (1) 36 one-half pound tins, together with a 400-hole punchboard for use under a plan, as thereon announced, under which a customer paid from 1¢ to 5¢ or nothing, and received one of said tins or nothing depending on the number he punched, and the person making the last punch also received a tin; and (2) 36 one-half pound packages of peanuts together with a device known as a "Whirling Derby" containing a number of slips with concealed numbers, for use under a scheme, as announced by a placard attached thereto, under which customers receiving certain numbers received a package free, the others paying 10¢ and the last sale receiving two packages—

Sold such assortments so packed and assembled to wholesalers, jobbers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan involving a game of chance or sale of chance to procure nuts at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the aforesaid sales plan, contrary to an established public policy of the United States Government and in competition with many who do not use any sales method involving chance or otherwise contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell its nuts in preference to those of said competitors, and with tendency and capacity to unfairly divert interstate trade to it from its said competitors, whereby substantial injury was 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 of its competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., 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 Imperial Candy Co., a corporation, hereinafter referred to as respondent, has 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: