

Complaint

41 F. T. C.

IN THE MATTER OF

JOHN P. DOWD, DOING BUSINESS UNDER THE FIRM
NAME AND STYLE OF BENNETTSTVILLE
MATTRESS FACTORYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5024. Complaint, Aug. 12, 1943—Decision, July 31, 1945*

Where an individual engaged in the manufacture and interstate sale and distribution of mattresses and other bedding—

Represented through words "Made of new Materials" prominently displayed on labels attached to his products, and through statements that they were composed of "motes, fly, strips," "cotton linters, fly," and "fly, motes, dusthouse," that they were made from entirely new material known to the public and to the trade by such terms;

When in fact they were not made from new materials and were not made entirely from cotton linters, fly, motes, strips, and dusthouse, but were composed in part of what is known in the cotton and textile industries as "sweeps," namely sweepings from the floors of cotton mills, warehouses, or factories, which contain a substantial percentage of dirt, oil, and other foreign and contaminating matter which accumulates on such floors; and such filling was not new in the sense that it was clean and uncontaminated;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and that said products were composed entirely of new materials which were clean and uncontaminated, and thereby to induce the purchase of substantial quantities thereof, and with the effect of so doing and, through practice of labeling his products as aforesaid, of placing in the hands of dealers a means and instrumentality of similarly misleading and deceiving the purchasing 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. Miles J. Furnas*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Nelson Walser Edens, of Bennettsville, S. Car., 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 John P. Dowd, doing business under the firm name and style of Bennettsville Mattress Factory, 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 interest

of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John P. Dowd, is an individual, doing business under the firm name and style of Bennettsville Mattress Factory, with his office and principal place of business located at Bennettsville in the State of South Carolina.

Respondent is now, and has been for a long time last past, engaged in the business of manufacturing mattresses and other bedding. He causes said products, when sold, to be shipped from his place of business in South Carolina to purchasers thereof in 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 among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course of its business, and for the purpose of inducing the sale of its said products, respondent has made false, deceptive and misleading statements and representations with respect to the character, quality and nature of the materials used in the manufacture of his products. Such representations are made by means of printed labels or advertisements affixed to its products on which is shown the name of the respondent and other matter reading, among other ways, as follows:

Made by
Bennettsville Mattress Factory
Phone 128 J Bennettsville, S. C.
MADE OF NEW MATERIALS
MATERIAL USED IN FILLING
MOTES
FLY
STRIPS
FINISHING LINT

Other tags attached to respondent's mattresses and other products set out the same headings, including the words "Made of New Material" and describe the filling contained therein in various ways, such as:

MOTES, FLY, STRIPS.
COTTON LINTERS, FLY.
FLY, MOTES, DUSTHOUSE.

PAR. 3. Respondent's use in connection with his products of the term "MADE OF NEW MATERIALS" and referring to the filling contained therein as "Cotton Linters," "Fly," "Motes," "Strips," "Dusthouse," "Lint," or "Finishing Lint," has a tendency and capacity to mislead and deceive prospective purchasers into the mis-

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taken and erroneous belief that his mattresses and other products are made from entirely new materials known to the public and to the trade as "Cotton Linters," "Fly," "Motes," "Strips," "Dust-house," "Lint" and "Finishing Lint." In truth and in fact such products are not made from new materials and are not made from "cotton linters," "fly," "motes," "strips," "dusthouse," "lint" or "finishing lint," but are composed in whole or in part from what is known in the cotton and textile industries as "sweeps," which are sweepings from the floor of cotton mills, warehouses or factories and which contain a substantial percentage of oil, dirt or other foreign matter caused by being trod under foot in the dust, oil, and other foreign and contaminating matter which commonly accumulates on the floor of cotton mills, factories or warehouses. Such filling is not new in the sense that it is clean or uncontaminated and the use by the respondent of the term "New Material" in connection with the designations "cotton linters," "fly," "motes," "strips," "dusthouse," "lint" or "finishing lint," misleads and deceives the purchasing and consuming public into the erroneous belief that the materials contained in respondent's products are clean and uncontaminated.

PAR. 4. Respondent's acts and practices as herein set out place in the hands of retailers and dealers the means and instrument of making and furthering such false and misleading representations, and have enabled such retailers and dealers to increase their own sales of respondent's products so designated, described and represented, thus lessening the market for similar goods, the nature, quality and character of which are truthfully stated.

PAR. 5. The use by the respondent of the false and misleading statements and representations hereinabove set out, in offering for sale and selling his products, has had and now has the capacity to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such false statements, representations and advertisements are true; that said products manufactured and sold by respondent are actually manufactured from the new materials commonly referred to as "Cotton Linters," "Fly," "Motes," "Strips," "Dusthouse," "Lint," and "Finishing Lint," and to the purchase of substantial quantities of respondent's products on account of such mistaken and erroneous beliefs induced as aforesaid.

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 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 August 12, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, John P. Dowd, an individual, doing business under the firm name and style of Bennettsville Mattress Factory, charging him 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 said complaint were taken before a trial 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, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of 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, John P. Dowd, is an individual, doing business under the firm name and style of Bennettsville Mattress Factory, with his office and principal place of business located at Bennettsville, in the State of South Carolina.

Respondent is now, and for several years last past has been, engaged in the business of manufacturing, and in the sale and distribution of, mattresses and other bedding. He causes said products, when sold, to be transported from his place of business in the State of South Carolina to purchasers thereof located in various other States of the United States. 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.

PAR. 2. In the course and conduct of his said business and for the purpose of inducing the sale of his said products, respondent has made false, deceptive, and misleading statements and representations with respect to the character, quality, and nature of the materials used in the manufacture of said products. Such representations are made by means of printed labels attached to said products,

which purport to set out the material content of said products. On these labels the following words are prominently displayed: "Made of New Materials." In setting out the material content of his various products, respondent has variously represented that his mattresses and other bedding are composed of "motes, fly, strips," "cotton linters, fly," and "fly, motes, dusthouse."

PAR. 3. The use by the respondent of the term "Made of New Materials" and the designation of the filling contained in his said products as cotton linters, fly, motes, strips, and dusthouse have a tendency and capacity to mislead and deceive prospective purchasers into the mistaken and erroneous belief that his mattresses and other bedding are made from entirely new materials known to the public and to the trade as cotton linters, fly, motes, strips, and dusthouse. In truth and in fact such products are not made from new materials and are not made entirely from cotton linters, fly, motes, strips, and dusthouse but are composed in part of what is known in the cotton and textile industries as "sweeps," which are sweepings from the floors of cotton mills, warehouses, or factories and which contain a substantial percentage of oil, dirt, or other foreign matter accumulated by being trod underfoot in the dust, oil, and other foreign and contaminating matter which commonly accumulates on the floors of cotton mills, factories, or warehouses. Such filling is not new in the sense that it is clean or uncontaminated, and the use by the respondent of the term "New Material" in designating the material content of his mattresses and other bedding composed in part of sweeps misleads and deceives the purchasing and consuming public into the erroneous and mistaken belief that the materials contained in respondent's products are clean and uncontaminated.

PAR. 4. By attaching to his said products labels stating that said products are composed of new materials when in fact they are composed in part of "sweeps" respondent places in the hands of dealers a means and instrumentality for misleading and deceiving the purchasing public.

PAR. 5. The use by the respondent of the false and misleading statements and representations hereinabove described in offering for sale and selling his mattresses and other bedding has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and that said products manufactured and sold by respondent are composed entirely of new materials which are clean and uncontaminated, and to induce the purchase of substantial quantities of respondent's products on account of such mistaken and erroneous beliefs.

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Order

CONCLUSION

The aforesaid acts and practices of the 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, answer of the respondent, testimony and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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, John P. Dowd, an individual, trading as Bennettsville Mattress Factory or trading under any other trade name, and his 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 bedding in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "New Materials" or any other term of similar import to designate or describe the material content of mattresses or other bedding composed in whole or in part of "sweeps."

2. Representing, directly or by implication, that any of respondent's said products composed in whole or in part of "sweeps" is composed of new materials.

It is further ordered, That the respondent shall within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
FREDERICK A. CLARKE, TRADING AS BONCQUET
LABORATORIES

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

Docket 3660. Complaint, Dec. 8, 1938—Decision, Aug. 7, 1945

Where an individual engaged in the interstate sale and distribution of a preparation designated "Boncquet Blood Building Tablets," "Boncquet Hemo-Tabs," or "Boncquet Tablets," through advertisements in newspapers and periodicals and in circulars, leaflets, pamphlets and other advertising material—

Represented that his said preparation contained the active principle of raw liver and vegetable iron in effective therapeutic amounts; was a cure or remedy for, and constituted a competent and effective treatment for, both pernicious and secondary anemia; would regenerate one-third of the blood in nine days and entirely rebuild the blood in thirty days; and would nourish and stimulate the bone marrow to produce red blood corpuscles and hemoglobin and bring the blood to normal red cell count;

The facts being that it did not contain the active principle of raw liver or any extractive of liver, or vegetable iron—respectively employed in the treatment of pernicious and of secondary anemia—in effective therapeutic amounts, even disregarding his practice of discarding from the liver extract used by him, the filtrate, in which is found the value of said substance in the treatment of pernicious anemia; and preparation in question, because of its negligible liver content and low iron content, could not be considered as effective in regenerating the blood, stimulating the bone marrow to produce red blood corpuscles or hemoglobin, and bringing the blood to normal red cell count;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false advertisements were true, and of causing it, as a result, to purchase a substantial amount of his said preparation:

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. Edward E. Reardon* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Merle P. Lyons and *Mr. Clark Nichols* for the Commission.

Mr. Eldon V. Soper, *Mr. Oliver O. Clark*, *Mr. Charles T. Lester* and *Mr. J. Paul Elliott*, Receiver, of Los Angeles, Calif., 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