

IN THE MATTER OF

SIDNEY E. BLUMENTHAL, HARRY J. BLUMENTHAL AND
MRS. RUBY S. BLUMENTHAL, TRADING AS BLUMEN-
THAL PRINT WORKSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5142. Complaint, Mar. 25, 1944—Decision, Sept. 23, 1946*

Where three individuals engaged in the buying and interstate sale and distribution to mattress manufacturers and to dealers for resale to the public, of mattress ticking and other cloth fabrics, a substantial portion of which was piece goods finished to their order—

Falsely represented through statements on labels attached to said products and in circulars, catalogs, and other advertising media, that their mattress ticking and fabrics were sterile, sanitary, antiseptic, odorless, and bacteriostatic, and bacteria-, germ- and water-repellent, prevented perspiration odors; and wore longer and were a guard against the spread of infection;

With tendency and capacity to mislead and deceive a substantial number of mattress manufacturers, dealers, and members of the purchasing public, and thereby to cause them to purchase their products, or mattresses in which said products had been used:

Held, That such 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.

Before *Mr. John W. Addison*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Isaac S. Heller, of New Orleans, La., for respondents.

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 Sidney Blumenthal, Harry J. Blumenthal, and Mrs. Ruby S. Blumenthal, individually and trading as Blumenthal Print Works, hereinafter referred to as respondents, have 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. Respondents Sidney E. Blumenthal, Harry J. Blumenthal, and Ruby S. Blumenthal are individuals, trading under the name Blumenthal Print Works, with their principal office and place of business at 425 Godchaux Building, New Orleans, La.

PAR. 2. Respondents are now, and for more than 3 years last past have been, engaged in buying, selling, and distributing mattress ticking and other cloth fabrics.

Respondents cause said products, when sold, to be shipped from their place of business in the State of Louisiana to dealers for resale at their places of business in the various States of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course and current of trade in said products 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 their business, aforesaid, and for the purpose of inducing the purchase of their said products, respondents, through labels appearing on said products and through various advertising circulars, catalogs, and periodicals having a general circulation, and other printed or written matter, all of which are distributed among prospective customers in the various States of the United States and in the District of Columbia, have made misleading statements and representations concerning their said products. Among such misleading statements and representations so made and distributed are the following:

STERITIZED FABRIC has a proven sales idea, proven in shoes, proven in clothes, proven in hats.

The sales appeal of a STERITIZED Fabric has been proven in many other fields. We are not guessing when we say that what has been done in the shoe, the hat, and the dress industries can also be done in the mattress industry.

In the Nation's Greatest Stores, other merchandise has shown sales jumps by using this same Germ-Repellent Method.

STERITIZED FABRIC—Repellent to Bacteria, Repellent to Water.

STERITIZED mattress ticking avoids perspiration, stains, and odor.

STERITIZED fabric is absolutely noninjurious.

STERITIZED FABRIC Repels Germs. Helps protect all the family against spread of infection, is positively nonirritating, guards against odors.

STERITIZED mattress fabric * * * tested under standards stated in Circular 198. U. S. Department of Agriculture, made by Blumenthal Print Works, New Orleans, U. S. A.

Blumenthal Print Works, Converters of Cotton Cloth.

PAR. 4. Through the statements and representations set out in Paragraph 3 hereof, and others similar thereto not specifically set out herein, respondents have represented that their said mattress ticking, cotton cloth, and fabrics are sterile, sanitary, antiseptic, odorless, and bacteriostatic, and bacteria-, germ-, and water-repellent; that said material prevents perspiration and other stains and odors and that the effectiveness of said product has been proven in other fields; that said

Findings

43 F. T. C.

products wear longer and are a guard against the spread of infections; and further, by the use of the words "works" and "converters" in the manner represented, respondents represent that they are manufacturers, makers, or converters of said mattress ticking, cotton cloth, and fabrics.

PAR. 3. The said statements made by respondents as aforesaid are false, deceptive, and misleading. In truth and in fact respondents do not own, operate, or manage and control any plant where said products are manufactured, made, or converted, and respondents do not manufacture, make, convert, or process said mattress ticking, cotton cloth, and fabrics, and respondents' said materials are not sterile, antiseptic, sanitary, odorless, and bacteriostatic. Respondents' said mattress ticking, cotton cloth, and fabrics will not prevent perspiration and other sores and odors, and respondents' said materials are not bacteria-, germ-, and water-repellent; and further respondents' said mattress ticking, cotton cloth, and fabrics do not wear longer and are not a guard against the spread of infections, and the effectiveness of said products has not been proven in other fields.

PAR. 4. Respondents' said trade name Blumenthal Print Works imports and implies that respondents own and operate a plant or works for making, and make, the mattress ticking, cotton cloth, and fabrics sold by them. This is deceptive and misleading because respondents are not the manufacturers of said products.

PAR. 5. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of their said products have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid statements and representations are true, and cause many members of the purchasing public, because of such mistaken and erroneous belief so engendered, to purchase a substantial amount of respondents' said products to their injury and to the injury of the public.

PAR. 6. The aforesaid acts and practices of respondents 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 March 25, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Sidney E. Blumenthal, Harry J. Blumenthal, and Mrs. Ruby S. Blu-

Findings

menthal, trading as Blumenthal Print Works, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, certain evidence in support of and in opposition to the complaint was introduced before a trial examiner of the Commission theretofore duly designated by it, and such evidence was duly recorded and filed in the office of the Commission. Thereafter, a stipulation was entered into between the Assistant Chief Counsel for the Commission and counsel for respondents, which provided that the statement of facts therein contained might be made a part of the record herein, and that the Commission might proceed upon the complaint, answer, stipulation, and evidence introduced at the hearings to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Subsequently, the proceeding regularly came on for final consideration by the Commission upon the entire record, as set forth above, 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. The respondents, Sidney E. Blumenthal, Harry J. Blumenthal, and Mrs. Ruby S. Blumenthal, are individuals trading under the name Blumenthal Print Works, with their principal office and place of business located at 425 Godchaux Building, New Orleans, La. Respondents are now, and for a number of years last past have been, engaged in buying, selling, and distributing mattress ticking and other cloth fabrics, a substantial portion of such goods being finished piece goods which have been finished to respondents' order.

PAR. 2. Respondents cause and have caused their products, when sold, to be transported from their place of business in the State of Louisiana, or from the place in which such products are manufactured or finished, to mattress manufacturers for use in the manufacture of mattresses, and also to dealers for resale to the public, such manufacturers and dealers being located in various States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

Order

43 F. T. C.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents have made various statements concerning such products, such statements appearing on labels attached to such products and also in circulars, catalogs and other advertising media distributed among prospective purchasers. Among such statements are the following:

STERITIZED FABRIC—Repellent to Bacteria, Repellent to Water.

STERITIZED mattress ticking avoids perspiration * * * odors.

STERITIZED FABRIC Repels Germs. Helps protect all the family against spread of infection, is positively nonirritating, guards against odors.

Through the use of these statements, and others of a similar nature, respondents have represented that their mattress ticking and fabrics are sterile, sanitary, antiseptic, odorless, and bacteriostatic, and bacteria-, germ-, and water-repellent; that they prevent perspiration odors; and that they wear longer and are a guard against the spread of infection.

PAR. 4. These representations are erroneous and misleading. Respondents' products are not in fact sterile, antiseptic, sanitary, odorless, or bacteriostatic, nor are they bacteria-, germ-, or water-repellent. The products do not prevent perspiration odors. They do not wear longer nor guard against the spread of infection.

PAR. 5. The use by respondents of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial number of mattress manufacturers, dealers, and members of the purchasing public with respect to the character and qualities of respondents' products, and the tendency and capacity to cause such persons to purchase respondents' products, or mattresses in which such products have been used, as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents 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, the answer of respondents, evidence introduced before a trial examiner of the Commission theretofore duly designated by it, and a stipulation of facts entered into between counsel for the Commission and counsel for

respondents, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Sidney E. Blumenthal, Harry J. Blumenthal, and Mrs. Ruby S. Blumenthal, individually and trading as Blumenthal Print Works, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondents' mattress ticking and other cloth fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondents' products are sterile, sanitary, antiseptic, odorless, or bacteriostatic.
2. That said products are bacteria-, germ-, or water-repellent, or that they guard against the spread of infection.
3. That said products prevent perspiration odors.
4. That said products wear longer than other similar products.

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

Complaint

43 F. T. C.

IN THE MATTER OF

CUSTOM HOUSE PACKING CORPORATION ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5404. Complaint, Nov. 27, 1945—Decision, Sept. 23, 1946

Where a Pacific Coast packer of sardines and other sea-food products—

- (a) Paid and granted, along with others, to its exclusive corporate distributor, commissions or brokerage fees which latter, acting as its agent, paid over in part to so called "buying brokers" or "brokers" who in fact purchased for resale for their own account and did not, in transactions concerned, function as brokers or subbrokers; and

Where said distributor, which—with principal office and place of business in San Francisco and branches in Seattle, Chicago and New York—was engaged in distribution of food products, including those packed for it by the aforesaid packer and others,

- (b) Paid over remainder of such commissions or brokerage, after retaining part, to so-called "buying brokers", or "brokers" who purchased for resale for their own account where sales were made direct to them and without the intervention of subbrokers, (1) through deducting commissions from the invoice price of food products purchased, or (2) by selling to such buyers at a net price which reflected such amount, or (3) by remitting such amount by check after such buyers had accepted and honored draft for the purchase price:

Held, That such paying and granting of commissions, brokerage fees, or allowances or discounts in lieu thereof, under the circumstances set forth, to buyers of food products on purchases for their own account, constituted violations of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Mr. Walter Slack, of San Francisco, Calif., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Custom House Packing Corp., is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 608 Ocean View Avenue, Monterey, Calif., and is engaged in the