

Complaint

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IN THE MATTER OF
SORBTEx FOUNDATION, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4989. Complaint, June 30, 1943—Decision, Apr. 23, 1948*

Where a corporation engaged in the manufacture and interstate sale and distribution of a chemical solution intended for use as a treatment or process for towels, designated "Sorbtex"; in advertising through pamphlets, booklets, circulars, and other advertising material intended primarily for towel manufacturers, but distributed also to some extent among members of the public, directly or by implication—

- (a) Represented that its said product made towels more absorbent and substantially increased their "dryability," and that towels treated therewith dried faster;
 - (b) Represented that the effects produced by the product were permanent, and that the solution remained in the fabric after repeated launderings; and
 - (c) Falsely represented that the product increased the tensile strength of towels;
- The facts being that, as disclosed by tests by the Bureau of Standards and private laboratories, the ability of the solution to increase the absorptive capacity of towels was limited to effects upon the towel before laundering and was in no sense permanent as the solution was not retained in the towels after repeated launderings;

With tendency and capacity to mislead and deceive a substantial number of towel manufacturers and of the purchasing public, and thereby to induce purchase by the former of substantial quantities of the product concerned:

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.

In said proceeding, in which as aforesaid noted there was evidence, consisting of tests by the Bureau of Standards and also by private laboratories, to the effect that respondent's product would not accomplish the results claimed therefor, and on the basis of which the Commission found respondent's representations erroneous and misleading in so far as they related to towels after laundering, the Commission was of the opinion that evidence in the record to the contrary of said conclusions, which consisted largely of the personal opinions of witnesses unsupported by actual tests, was insufficient to meet the evidence based on aforesaid tests.

In said proceeding in which the complaint also charged respondent with misrepresenting, directly or by implication, that its said preparation made white towels whiter and that the process involved was patented, the Commission was of the view that such additional charges were not sustained by the record.

Before *Mr. Randolph Preston*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Ralph Dombrower, of Richmond, 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 Sorbtex Foundation, Inc., 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 in that respect as follows:

PARAGRAPH 1. Respondent, Sorbtex Foundation, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its offices and principal place of business located at 210 East Franklin Street, in the city of Richmond, State of Virginia.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing, selling, and distributing a solution designated "Sorbtext," represented by respondent to be a treatment or process for application to towels and other fabrics to make towels more absorbent; to increase the dryability of towels and to make them dry faster; and to increase the tensile strength of the fabric and lengthen its life and make it more durable and to reduce abrasion without weakening the fibers of the fabric, and for other purposes.

In the course and conduct of its business, respondent has caused its said solution, when sold, to be shipped and transported from its place of business in the State of Virginia to manufacturers of towels and other fabrics 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 solution in commerce between and among the various States of the United States and in the District of Columbia.

The respondent is now, and at all times mentioned herein has been, engaged in substantial competition in commerce between and among the several States of the United States and in the District of Columbia, with other corporations and with partnerships, firms, and individuals, engaged in the sale and distribution of similar products or products sold and used for the same or similar purposes as those for which respondent represents its said solution. There are among such competitors in said commerce many who do not in any manner misrepresent the quality and character of their products and who do not make any false statements in connection with the sale and distribution of their products.

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PAR. 3. In the course and conduct of its said business in commerce, as aforesaid, respondent has made and is now making, and has caused and is now causing, the publication of false, misleading, and deceptive statements and representations concerning its said product through circulars, magazines, newspapers, and otherwise, circulated among purchasers and prospective purchasers by various means. Among and typical of the false, misleading, and deceptive statements and representations so made and used by respondent in connection with the offering for sale, and sale, of said product, are the following:

HOW THE SORBTEX PROCESS IMPROVES MODERN TOWELS

Sorbtex makes towels immediately usable, without "breaking in."

Sorbtex makes towels absorbent, without weakening the fibers. Reduced abrasion, lengthens durability.

Sorbtex substantially increases the "dryability" of towels.

Sorbtex remains in the towels, even after repeated launderings.

Sorbtex processed towels dry faster * * * wipe more quickly * * * dry with less effort * * * do not get soaking wet * * * require less abrasive rubbing * * * last longer * * * makes white towels whiter * * * process is permanent * * * tensile strength increased by 10% * * *

Famous patented "drop" test, which dramatically proves the greater dryability of Sorbtex treated towels.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not herein set-out, which purport to be descriptive of the nature and quality of respondent's said solution Sorbtex, respondent has represented, directly or by implication, among other things, that said solution when applied as directed to towels and other fabrics is permanent and remains in the fabric after repeated laundering; that it improves towels and makes new towels immediately usable without breaking in; that it makes towels and other fabrics more absorbent without weakening the fibers and substantially increases the dryability of towels; that Sorbtex-processed towels do not get soaking wet; that Sorbtex treated towels dry faster with less effort, and wipe more quickly; that Sorbtex-treated towels require less abrasive rubbing and last longer; that Sorbtex increases the tensile strength of the fiber and makes white towels whiter; and that said process is patented.

PAR. 5. The foregoing representations, and other representations not herein set-out, are false and misleading, and constitute false advertising. In truth and in fact, the said solution when applied as directed to towels and other fabrics, does not increase the tensile strength of the fiber in towels and other fabrics to which it is applied, and does not permanently remain in the fabric after repeated laundering;

said solution does not improve towels and does not make new towels immediately usable without breaking in, and does not prevent towels from getting soaking wet nor substantially increase their dryability or make them dry faster with less effort and wipe more quickly; said solution does not make white towels and other white fabric whiter with less effort, and does not make towels and fabrics more absorbent; and said process is not patented.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the quality and character of its aforesaid solution 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 and mistaken belief that such false statements, representations, and advertisements are true, and that the respondent's said solution Sorbtex possesses the qualities claimed and represented for it in the treatment of towels and other fabrics and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's solution and towels and other fabrics treated with said process.

The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to the character, quality, and effect of respondent's said solution, has had and now has the capacity and tendency to and does mislead and deceive a substantial number of manufacturers of towels and other fabrics into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and into contracting with the respondent for the use of Sorbtex applied to towels and other fabrics manufactured, sold, and distributed by them in preference to the products of competitors of the respondent.

As a result trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the quality and character of their products. In consequence thereof injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of 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 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 June 30, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Sorbtex Foundation, Inc., 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 that act. While no formal answer to the complaint was filed by respondent a letter was addressed to the Commission by respondent, denying all of the charges in the complaint. Thereafter, testimony and other evidence in support of and in opposition to the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the matter came on for final consideration by the Commission upon the complaint, respondent's denial of the charges therein, testimony, and other evidence, recommended decision of the trial examiner and respondent's exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument, 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 respondent, Sorbtex Foundation, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 11 East Franklin Street, Richmond, Va. Respondent is now, and for a number of years last past has been, engaged in the manufacture and sale of a chemical solution designated "Sorbtex" intended for use as a treatment or process for towels. The solution is sold by respondent principally to towel manufacturers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Virginia to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in its product 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 respondent has advertised its product by various means, including the distribution of pamphlets, booklets, circulars, and other advertising material. While the advertising is intended primarily for towel manufacturers, some of it is also distributed among members of the public. Among and typical of the statements appearing in the advertising are the following:

Sorbtex makes towels absorbent, without weakening the fibers. Reduced abrasion lengthens durability (Comm. Ex. 5).

Sorbtex substantially increases the "dryability" of towels (Comm. Ex. 5).

Sorbtex remains in the towels, even after repeated launderings (Comm. Ex. 5).

The fact that Sorbtex processed fibers dry 20% faster means that only 80% of the water, or moisture, has wet the fibers and the remaining 20% has been taken or is held by the absorbent (Comm. Ex. 12, p. 6).

Q. Is the Sorbtex treatment permanent?

A. Once the Sorbtex treatment is applied and the fabric or yarn is made absorbent it is permanently absorbent (Comm. Ex. 7).

A new, simple, inexpensive process for increasing and making permanent the "dryability" of all types of towels (Comm. Ex. 5).

Increases tensile strength on an average of 10 percent (Comm. Ex. 7).

PAR. 4. Through the use of these statements and others of similar import respondent has represented, directly or by implication, that its product makes towels more absorbent and substantially increases the "dryability" of towels; that Sorbtex-treated towels dry faster; that the effects produced by the product are permanent, the solution remaining in the fabric of towels after repeated launderings; and that the product increases the tensile strength of towels.

PAR. 5. The formula for respondent's product is as follows:

	<i>Parts</i>
Water—PH ₇ -----	1,000
Monosodium phosphate-----	4
Slaked lime (not less than 97% Ca (OH) ₂)-----	1

The product is intended to be mixed with water in the proportion of 1 gallon of the product to 50 gallons of water. The towels which are to be treated are subjected to the resulting solution. The theory upon which respondent bases its claims for the efficacy of the product, as explained by an officer of respondent who is also a chemist and one of the inventors of the process, is as follows:

* * * the whole theory behind the Sorbtex process and the theory on which our advertising department has based its claims, is simply this: That by treating fibers with certain salts which are mentioned in our patent these chemical salts go into the fibers. These salts go into the fiber containing a small amount of water which is chemically inherent in this salt. * * * This salt

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contains a certain percentage of water and when incorporated in the fiber, whether it be a towel, underwear, or whatever it might be, it carries that moisture in with it.

When that particular fabric or fiber is dried at a temperature of 100° F. or better, it loses that moisture which it has in it. When you begin to apply moisture to that particular fabric or fiber, that chemical salt on the inside has an affinity for water and tries to take it up. Therefore, we get a faster take-up due to the implanted salts in the fiber, and dispersion due to the fact that the salt is all through the fibers and goes from one fiber to another.

PAR. 6. At the request of the Commission, respondent's product was subjected to tests by the National Bureau of Standards and the results of those tests form a part of the record in this proceeding. Also in evidence are the results of three other tests of the product made by private testing laboratories, the results of two of these tests having been introduced by the Commission and one by respondent. While the results of these various tests vary in detail, it is clear from an examination of the results of all of the tests that insofar as the ability of respondent's product to increase the absorptive capacity of towels is concerned, such ability is limited to effects produced upon the towel before it is subjected to laundering. As a result of the laundering process, particularly after two or three launderings, the solution is almost completely removed from the towel and thereafter the towel has no appreciable absorptive capacity in excess of that of a towel which has never been treated with the solution. The testing laboratory whose report was introduced by respondent summarized the results of its tests as follows:

"Results of tests show the Sorbtex treatment to increase the amount of water absorbed, and the rate at which water is absorbed and dispersed by the treated towels prior to laundering. For the unwashed Turkish towels, there is a marked increase in the rates of water absorption and water dispersion of the treated versus the untreated towels; while for the crash towels, the treatment also increases to a significant extent the amount of water absorbed.

"After one laundering, however, the treated and untreated towels are practically equivalent in all respects related to absorbency; namely, quantity of water absorbed, and rate of water absorption and dispersion.

"Chemical analysis reveals that the phosphates used in treating these towels is almost entirely removed by one standard laundering. Once the treatment has been nullified by laundering, the treated towels fare no better than the untreated towels in the absorption tests conducted. In fact, test results show that the untreated, washed Turkish

towel is slightly better than the unwashed Sorbtex-treated towel in absorbency, and the same thing was observed for the crash towels with the exception of rate of water dispersion. The rate at which water is dispersed by the Sorbtex-treated crash towel is greater before than after laundering owing to the effect of the phosphate treatment. In terms of consumer serviceability the Sorbtex-treated towels offer the advantage of immediate usability and superior all-around performance prior to laundering, when compared to untreated and un-laundered toweling.

"Once the towels are laundered, however, the treated and untreated towels would be equivalent in performance."

The Commission therefore finds that respondent's representations are erroneous and misleading insofar as they relate to towels after laundering. The product does not render such towels more absorbent or increase their "dryability." Such towels will not dry faster. The effects produced by respondent's product are in no sense permanent, as the solution is not retained in the towels after repeated launderings. The evidence in the record, particularly that supplied by the National Bureau of Standards, also establishes that respondent's product does not increase the tensile strength of towels.

While there is evidence in the record contrary to these conclusions, such evidence consists largely of the personal opinions of witnesses unsupported by actual tests of the product and in the opinion of the Commission is insufficient to meet the evidence referred to above.

PAR. 7. While the complaint contains certain charges in addition to those discussed above, the Commission is of the view that such additional charges are not sustained by the record.

PAR. 8. The use by respondent of the erroneous and misleading representations herein set forth has the tendency and capacity to mislead and deceive a substantial number of towel manufacturers and a substantial portion of the purchasing public with respect to respondent's product, and the tendency and capacity to cause such manufacturers to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered.

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, respondent's denial of the charges in the complaint, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and respondent's exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Sorbtex Foundation, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's chemical product designated "Sorbtex," or any product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's product makes towels more absorbent, increases the "dryability" of towels, or causes towels to dry faster, unless such representations be limited to towels prior to laundering.

2. That effects produced by the use of said product are permanent, or that said product remains in the fabric of towels after repeated launderings.

3. That said product increases the tensile strength of towels.

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

THE STAFFIN JOHNS CO. 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 5120. Complaint, Jan. 26, 1944—Decision, May 12, 1948

Where three partners, engaged in the manufacture and competitive interstate sale and distribution of baby crib mattresses, through statements on their stationery and on tags and labels attached to their products and in other ways—

- (a) Falsely represented that they were the world's largest manufacturer of baby bedding; and
- (b) Falsely represented that their mattresses were recommended or prescribed by practicing physicians and were manufactured under the supervision of medical experts; when in fact they had never been actually so recommended or prescribed, and other claim was concededly untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, whereby said public was induced to purchase substantial quantities of their products and trade was diverted unfairly to them from their competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

In said proceeding in which the complaint also charged that respondents falsely represented that their said baby mattresses and bedding were made from or covered with lambs' wool worked into a fleecy felt; that said products, "sanitized" or treated with a coating of "sani-septic" preparation, were rendered ever dry, sanitary, and impervious to the effects of uric acid, were waterproof and dustproof and free from and immune to bacteria, germs, and odors, and were rendered nonallergic and health protecting; and that the price of \$9.95 or \$10.95 was a special or reduced price for said tufted baby mattresses: the Commission was of the opinion that the charge with respect to such additional representations had not been sustained.

Before *Mr. George Biddle*, trial examiner.

Mr. R. A. McOuat and *Mr. Jesse D. Kash* for the Commission.

Mr. Isidore Friedman, of New York City, 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 Max I. Staffin, Milton J. Spitzer, and David Staffin, copartners trading and doing business as the Staffin Johns Co.; Cum-A-Part Mattress Co., Inc., a corporation,