

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,

Complaint

44 F. T. C.

and Louis Staffin, Harry Staffin, Minnie Staffin, and Abraham Staffin, individually and as officers, directors, and agents of respondent corporation Cum-A-Part Mattress Co., Inc., 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, Max I. Staffin, Milton J. Spitzer, and David Staffin are individuals operating and doing business under the trade name, The Staffin Johns Co., with offices and principal place of business at 1308 North Halsted Street, Chicago, Ill. Said individual respondents, operating under said trade name, are now and have been for more than 3 years last past engaged in the manufacture, purchase for resale, and sale of mattresses, bedding, and furniture. Said respondents during the course and conduct of their business, as aforesaid, have sold similar products manufactured by respondent corporation Cum-A-Part Mattress Co., Inc.

PAR. 2. Respondent, Cum-A-Part Mattress Co., Inc., is a corporation organized, existing, and doing business under the the laws of the State of New York with its offices and principal place of business located at 499-505 Sackman Street, Brooklyn, N. Y. Said respondent is engaged in the manufacture, sale, and distribution of mattresses, bedding, and furniture, some of which said products are sold and shipped by said corporation to the individual respondents named in paragraph one hereof, operating under the trade name The Staffin Johns Co., for resale to the purchasing public.

PAR. 3. Respondent individuals, Louis Staffin, Harry Staffin, Minnie Staffin, and Abraham Staffin, are now, and have been during all the times hereinafter mentioned, officers, directors, and agents of respondent, Cum-A-Part Mattress Co., Inc., and managed, controlled, and directed the business and affairs of said corporation, particularly with respect to the acts and practices hereinafter alleged.

PAR. 4. All of the respondents hereinabove named act, and have acted during all the times mentioned herein, in conjunction and cooperation with one another in performing the acts and practices hereinafter alleged.

PAR. 5. Respondents are now and for several years last past have been engaged in the business of manufacturing, selling, and distributing mattresses, bedding, and furniture. Respondents cause said products, when sold, to be shipped from their respective places of business

in Illinois and New York to dealers for resale and to purchasers thereof located in various States of the United States and in the District of Columbia.

The 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. 6. In the course and conduct of their aforesaid business, respondents are now, and at all times mentioned herein have been in substantial competition with other individuals, and with other corporations, firms, and partnerships engaged in the business of manufacturing, selling, and distributing mattresses, bedding, furniture, and similar merchandise in commerce between the various States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, respondents have made and now make, and have placed in the hands of others the means whereby are made, false and misleading statements and representations by radio continuities and in advertisements inserted in newspapers, pamphlets, letters, and other media circulated through the mails and otherwise, and by tags and labels affixed to their said products when sold and shipped in interstate commerce. Among and typical, but not exclusive, of such statements and representations so made and published are the following:

The New Air Float, Sani-Fied Baby Mattress, Styled by Cum-A-Part Mattress Company, Inc.

A Promotionally Priced, Tufted, Wet-proof, Mattress * * * \$9.95 * * * \$10.95.

Sani-Septic ticking * * * Sani-Septic safeguards your health. This coating is resistant to:

Uric acid.

Water.

Bacteria.

Dust.

Mild acid.

Perspiration.

Germs.

Odors.

* * * fast color, washable * * * non allergic.

This is The New Ever Dry Process Guaranteed Wet Proof.

The picturization* of a sheep together with the words "Lamb's wool * * * warm, fleecy felt" and the word "doctor" or the prescription symbol "Rx" together with the words "recommended this specially designed mattress for baby's health * * * manufactured by The Staffin Johns Company, 1308 North Halsted Street, Chicago, Illinois * * * the world's largest manufacturer of baby bedding.

Complaint

44 F. T. C.

PAR. 8. Through the use of the statements and representations hereinabove set forth and others of similar import appearing in respondents' advertising material but not specifically set-out herein, the respondents represent that said The Staffin Johns Co. is the world's largest manufacturer of baby bedding; that respondents' baby mattresses and bedding are manufactured or made from or covered with lamb's wool worked into a fleecy felt; that said products are manufactured or made under the supervision of medical experts and are recommended or prescribed by graduate medical doctors and practicing physicians; that said mattresses and bedding so sanitized or treated with a coating of said Sani-Septic preparation are rendered ever-dry, sanitary, and impervious to the effects of uric acid; that said products so treated are waterproof and dustproof and are free from and immune to bacteria, germs, and odors; that said products by said treatment are rendered nonallergic and health-protecting; and that the price of \$9.95 or \$10.95 is a special or reduced price for said tufted baby mattresses.

PAR. 9. The aforesaid statements and representations are false and misleading. In truth and in fact the business conducted by respondent copartners under the trade name The Staffin Johns Co. is not the world's largest manufacturer of baby bedding; respondents' said baby mattresses and bedding are not made from or covered with lamb's wool, and the price markings \$9.95 and \$10.95 on said mattresses are fictitious and exaggerated and are not the prices at which said products are customarily offered for sale and regularly sold in the normal and usual course of the retail trade. Respondents do not regularly and continuously employ graduate medical doctors to supervise and direct the manufacture of said products, and the respondents' said products do not contain special health features resulting from scientific medical supervision and determination and are not specially recommended by practicing physicians; respondents' mattresses and bedding treated with said preparation Sani-Septic and so sanitized are not rendered wetproof, ever-dry, and dustproof, and are not proof against the absorption of moisture, nor sanitary and impervious to the effects of uric acid and enuresis; and respondents' said mattresses and bedding are not rendered free from and immune to bacteria, germs, and odors by said treatment, and it has no power to protect persons from substances to which they may be allergic.

PAR. 10. The acts and practices of the respondents, as above alleged, in the course of offering for sale and selling their said products in commerce as described herein, have had and now have the tendency and capacity to mislead and deceive a substantial portion of the pur-

chasing public into the mistaken and erroneous belief that such statements and representations are true. As a result of such erroneous and mistaken belief engendered as herein set forth, the purchasing public has been induced to purchase, and has purchased substantial quantities of respondents' said merchandise.

PAR. 11. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and the respondents' competitors, and constitute unfair methods of competition in interstate commerce 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 January 26, 1944, issued and subsequently served its complaint in this proceeding upon the respondents, Max I. Staffin, Milton J. Spitzer, and David Staffin, individually and as copartners trading as The Staffin Johns Co., and Cum-A-Part Mattress Co., Inc., a corporation, and Louis Staffin, Harry Staffin, Minnie Staffin, and Abraham Staffin, individually and as officers and directors of Cum-A-Part Mattress Co., Inc., charging said respondents 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 said act. After the filing of respondents' answers, testimony, and other evidence in support of and in opposition to the allegations of 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. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answers thereto, testimony, and other evidence, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of respondents, and 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. The respondents, Max I. Staffin, Milton J. Spitzer, and David Staffin, are individuals trading and doing business as co-

partners under the name of The Staffin Johns Co., with their office and principal place of business located at 1308 North Halsted Street, Chicago, Ill. These individuals, hereinafter referred to as respondents, are now, and for a number of years last past have been, engaged in the manufacture and in the sale and distribution of baby crib mattresses.

PAR. 2. Respondents' products, when sold are shipped from respondents' place of business in Chicago, Ill., to dealers for resale and to other purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein 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.

PAR. 3. In the course and conduct of their business, respondents are now, and at all times mentioned herein have been, in substantial competition with other individuals and with corporations, firms, and partnerships also engaged in the business of manufacturing, selling, and distributing baby crib mattresses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. For the purpose of inducing the purchase of their mattresses, respondents have made and now make a number of advertising statements and representations with respect to themselves and their products. Included in the statements and representations they have made on their stationery and on tags and labels attached to their products, and by other means, are the following:

The World's Largest Manufacturers of Baby Bedding; and

Rx

Doctors

Recommend

This Specially

Designed

Mattress

for

Baby's Health

PAR. 5. Through the use of these statements and representations, and others similar thereto, respondents have represented (1) that The Staffin Johns Co. is the world's largest manufacturer of baby bedding, and (2) that respondents' mattresses are recommended or prescribed by practicing doctors or physicians and that said products are manufactured under the supervision of medical experts.

PAR. 6. As it relates to the size of The Staffin Johns Co. in relation to other manufacturers of baby bedding, the evidence is uncontroverted. According to a letter in the record, dated August 7, 1943, written by respondent Max I. Staffin, the monthly output of respondents' mattresses was then approximately 10,000 units; and on February 13, 1945, the same respondent testified that the annual production of mattresses for The Staffin Johns Co. would not exceed 132,000. There is evidence, on the other hand, that the Rose-Derry Co., engaged in the manufacture of baby crib mattresses, as well as other mattresses and allied products, during the year 1944 produced at only 1 of its 2 manufacturing plants and sold 226,904 baby crib mattresses, and that during the year 1943 the same plant manufactured and sold 210,780 baby crib mattresses. In 1942 this manufacturer produced at the same plant and sold 142,289 baby crib mattresses. It is not true, therefore, that The Staffin Johns Co. is the world's largest manufacturer of baby bedding, and the respondents' representations to the effect that it is are false and misleading.

In support of respondents' advertising representations that their baby crib mattresses are recommended or prescribed by doctors or physicians and that their mattresses are manufactured under the supervision of medical experts, respondent, Max I. Staffin, testified that in conversations he had with a number of doctors concerning the general design of his mattresses, the doctors expressed the opinion that a mattress embracing the ideas he described would be fine for babies to sleep on. This witness freely admitted, however, that such doctors as he had spoken to had never been shown respondents' labels and had never been advised that their approval of the mattresses was sought or was to be used for advertising purposes. He could not even be sure that any of the doctors had ever even seen any of the mattresses, and he had no written communications or other concrete evidence showing the approval of any practicing doctor or physician either of the mattresses themselves or of the plan or design on which they are constructed. It is clear from the record that respondents' mattresses have never been actually recommended or prescribed by physicians generally, or even by any single physician, and respondents make no contention that any medical expert supervises or is connected in any way with the manufacturing of their products.

The Commission is of the opinion, therefore, and finds, that the representations on respondents' labels and elsewhere that their mattresses are recommended or prescribed by physicians, and that the mattresses are manufactured under the supervision of medical experts, are without foundation and false.

Order

44 F. T. C.

PAR. 7. The complaint listed a number of other statements and representations in addition to those referred to herein which have been used by respondents in connection with the sale of their mattresses, and charged that such statements and representations are false and misleading. The Commission is of the opinion, however, that the charge with respect to these additional representations has not been sustained.

The complaint also included as respondents in this proceeding Cum-A-Part Mattress Co., Inc., a corporation, and Louis Staffin, Harry Staffin, Minnie Staffin, and Abraham Staffin, individually and as officers and directors of Cum-A-Part Mattress Co., Inc. The Commission finds that none of these respondents were shown to have been connected with any of the representations found to have been false and misleading, and on the basis of this finding is of the opinion that insofar as these respondents are concerned the complaint should be dismissed.

PAR. 8. The use by respondents, Max I. Staffin, Milton J. Spitzer, and David Staffin, trading and doing business as copartners under the name of The Staffin Johns Co., of the foregoing false, deceptive, and misleading statements and representations, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations are true. As a result of such erroneous and mistaken belief the purchasing public has been induced to purchase and has purchased substantial quantities of these respondents' products and in consequence thereof substantial trade has been diverted unfairly to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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, respondents' answers thereto, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's

recommended decision, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents named below have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents, Max I. Staffin, Milton J. Spitzer, and David Staffin, individually and as copartners trading as The Staffin Johns Co., 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, or distribution of baby crib mattresses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are the world's largest manufacturers of baby bedding.

2. Misrepresenting in any manner respondents' size or production capacity either in relation to other manufacturers of baby bedding or otherwise.

3. Representing, directly or by implication, that respondents' mattresses are recommended or prescribed by doctors or physicians, or representing that such products are manufactured under the supervision of medical experts.

For reasons appearing in the findings as to the facts: *It is further ordered*, That the complaint herein be, and it hereby is, dismissed as to the respondents, Cum-A-Part Mattress Co., Inc., and Louis Staffin, Harry Staffin, Minnie Staffin, and Abraham Staffin, individually and as officers and directors of Cum-A-Part Mattress Co., Inc.

It is further ordered, That respondents, Max I. Staffin, Milton J. Spitzer, and David Staffin, individually and as copartners trading as The Staffin Johns Co., 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.

IN THE MATTER OF

RICHARD COLGIN CO., INC. 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 5431. Complaint, Apr. 10, 1946—Decision, May 13, 1948

Where a corporation and the individual who was its president and principal stockholder, engaged in the manufacture and competitive interstate sale of meat curing and meat-preservative and seasoning products; through advertising material, letterheads, and other printed matter, directly and by implication—

- (a) Represented that said company was an old, reliable firm which had been in business for a long time and that aforesaid individual had been engaged in the manufacture of meat-curing and preservative products for about 50 years;
- (b) Represented that they were successors to the business established by said individual's father and were the sole and exclusive distributors of the products developed and patented by him;

The facts being that while aforesaid individual had been from time to time connected with, and had assisted, his father in the business the father organized and incorporated, he held positions elsewhere during some 18 or 20 years; and later, as a result of family dissension, severed relations with his father's company, of which he had been president, and began the sale of meat-curing products in competition therewith, and in 1945 organized the corporation above referred to to continue the sale of such products which he had theretofore carried on otherwise and through other corporate instrumentalities; he had, accordingly, been in business for a comparatively short period only; and neither he nor said corporation was successor to the business established by the father, nor were they sole or exclusive distributors of the products developed or patented by him;

- (c) Represented as aforesaid and through statements on letterheads and other printed matter that they owned, operated, or controlled warehouses located in various cities of the United States including Memphis, Atlanta, Tulsa, and Raleigh; notwithstanding the fact their warehousing activities were limited to the use from time to time of the facilities of bonded warehouses in said cities, in which they had no financial interest; and

Where some of said individual's salesmen, immediately after the severance of his connection with the aforesaid family corporation—

- (d) Variouslly represented to customers that said family corporation was out of business, and that its financial condition was such that it could not fill orders; that said individual's business was a successor to it; and that the products originated by said father could be purchased only from said individual;

When in fact said family company was continuing in the manufacture and sale of the products involved; customers who had dealt with it for a number of years knew that the father, during his lifetime, was connected with said company and associated his name therewith; and neither said