

Complaint

IN THE MATTER OF

PUROFIED DOWN PRODUCTS CORP., ET AL.

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

Docket 5820. Complaint, Oct. 23, 1950—Decision, Aug. 14, 1951

There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of new and used, and it is its understanding and belief, in buying feather pillows, that the feathers are new and unused unless the labeling states otherwise.

Where a corporation, and its five officers, engaged in the interstate sale and distribution of pillows—

- (a) Inaccurately and misleadingly labeled their pillows in that the true proportions of a product labeled "50% Grey Duck Down, 50% Grey Duck Feathers," were 27 and 73 percent; and in that pillows labeled respectively "Grey Duck Down" and "White Goose Down" contained only 64 and 65 percent duck down and were not, as represented, composed entirely of said substances;
- (b) Sold pillows containing substantial amounts of used or second-hand feathers without disclosing the fact that they were used rather than new;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby induce its purchase thereof:

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. William L. Pack*, trial examiner.

Mr. Russell T. Porter for the Commission.

Mr. Harry Heller, of Brooklyn, N. Y., 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 Purofied Down Products Corp., a corporation, and Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro, individually and as officers of said corporation, 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. Respondent Purofied Down Products Corp. is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business at 1027 Met-

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ropolitan Avenue, Brooklyn, N. Y. Respondents Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro are the president, secretary-treasurer, vice president, vice president, and sales manager, respectively, of said corporate respondent. Said individual respondents in their respective individual and official capacities have dominated, directed, and controlled and now dominate, direct and control the policies, affairs, and activities of corporate respondent. The addresses of the individual respondents are the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for several years last past, have engaged in the sale of pillows to dealers for resale to the public.

Respondents cause and have caused their said pillows when sold to be shipped from their place of business in the State of New York to dealers in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in their said pillows, in commerce, among and between the several States of the United States.

PAR. 3. In the course and conduct of their business respondents cause labels to be attached to their pillows purporting to state and set out the percentages of down and feathers therein. Typical, but not all inclusive of these labels are the following:

50% Grey Duck Down, 50% Grey Duck Feathers
Grey Duck Down
White Goose Down

PAR. 4. By means of the labels aforesaid, respondents represented that the pillow labeled "50% Grey Duck Down, 50% Grey Duck Feathers" was filled with grey duck down and grey duck feathers in the percentages set out on the label and that the fillings of the pillows labeled "Grey Duck Down" and "White Goose Down" were composed entirely of grey duck down and white goose down, respectively.

PAR. 5. Said labels were false, misleading, and deceptive. In truth and in fact, the filling of the pillow labeled "50% Grey Duck Down, 50% Grey Duck Feathers" was composed of 27 percent grey duck down and 73 percent grey duck feathers. The fillings of the pillows labelled "Grey Duck Down" and "White Goose Down" were not composed entirely of grey duck down and white goose down, respectively, but on the contrary, contained 36 percent duck feathers and 35 percent goose feathers, respectively. In addition, the pillows labeled "50% Grey Duck Down, 50% Grey Duck Feathers," "Grey Duck Down" and a pillow labeled "10% Grey Duck Down, 90% Grey Duck Feathers" and others, contained substantially in excess of 5 percent feather fiber.

Some of respondents' pillows, particularly those labeled "Grey Duck Down," "10% Grey Duck Down and 90% Grey Duck Feathers," "10% White Goose Down, 90% White Goose Feathers" and "Grey Duck Down" and others, contained substantial amounts of second-hand or used feathers. This fact was not disclosed on the labels or otherwise.

PAR. 6. In buying pillows represented to be filled with feathers, the purchasing public understands and believes that the feathers are new and unused, unless the labeling states otherwise. There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of used and new feathers.

PAR. 7. By attaching false, misleading, and deceptive labels to their pillows, respondents placed in the hands of dealers, means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 8. The use by the respondents of the false, misleading, and deceptive labels had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of their said pillows, and to induce a substantial portion of the purchasing public to purchase respondents' said pillows because of such erroneous belief.

PAR. 9. The aforesaid acts and practices of respondents, 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated August 14, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 23, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, 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

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the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusions based thereon and an order disposing of the proceeding. While counsel for respondents reserved in the stipulation the right to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Purofied Down Products Corp. is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 1027 Metropolitan Avenue, Brooklyn, N. Y. Respondents Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro are president, secretary-treasurer, vice president, vice president, and sales manager, respectively, of respondent corporation. The individual respondents dominate, direct and control the policies, affairs and activities of the corporation.

PAR. 2. Respondents are now and for several years last past have been engaged in the sale of pillows, the pillows being sold to dealers for resale to the public. Respondents cause and have caused their pillows when sold, to be shipped from their place of business in the State of New York to purchasers in various other States of the United States. Respondents maintain and have maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents attach to their pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. In one instance a pillow labeled

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"50% Grey Duck Down, 50% Grey Duck Feathers" actually contained only 27 percent duck down, the undercoating of ducks, and 73 percent duck feathers. In another instance the label on a pillow read "Grey Duck Down" thereby representing that such pillow was composed entirely of down, whereas the pillow was in fact composed of 64 percent down and 36 percent duck feathers. In a third instance a pillow labeled "White Goose Down" was found to contain only 65 percent down and 35 percent feathers.

PAR. 4. Respondents have also sold pillows containing substantial amounts of used or second-hand feathers, without disclosing that such feathers were used rather than new feathers.

In buying pillows containing feathers the purchasing public understands and believes that the feathers are new and unused, unless the labeling states otherwise. There is a preference on the part of the purchasing public for pillows containing new feathers as distinguished from those containing used feathers or a combination of new and used feathers.

PAR. 5. The acts and practices of respondents as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out 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

It is ordered, That the respondents, Purofied Down Products Corp., a corporation, and its officers, and Louis Puro, Sam Puro, Jack Puro, Joe Puro, and Arthur Puro, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondents' pillows are made.

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2. Selling or distributing pillows composed in whole or in part of used or secondhand feathers, without clearly disclosing on labels attached to such pillows the fact that such feathers are used or secondhand.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 the order to cease and desist [as required by said declaratory decision and order of August 14, 1951].

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IN THE MATTER OF

THE CURTISS CANDY CO.

MODIFIED ORDER TO CEASE AND DESIST IN REGARD TO VIOLATIONS OF SEC. 3, AND SUBSECS. (a), (d), (e), (f) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; TOGETHER WITH SPECIAL CONCURRING OPINION OF COMMISSIONER MASON

Dockets 4556 and 4673. Order, Aug. 15, 1951

Order modifying cease and desist order issued on November 12, 1947, 44 F. T. C. 237 at 274, so as to require respondent, in connection with the purchase of corn sirup or glucose or other candy ingredients, and in the sale of candy or other candy products to cease and desist from the various unlawful and discriminatory practices as in said modified order set out.

Before *Mr. John L. Hornor* and *Mr. J. Earl Cox*, trial examiners.
Mr. Austin H. Forkner for the Commission.

Walker, Atwood, Zukowski & McFarland, of Chicago, Ill., for respondent.

Mr. William A. Quinlan and *Mr. Richard F. Wilkins*, of Washington, D. C., for National Candy Wholesalers Association, Inc., intervenors.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of the respondent filed in Docket No. 4556, and upon the amended and supplemental complaint of the Commission and answer of the respondent filed in Docket No. 4673 (which proceedings were consolidated by the Commission on October 11, 1944), testimony and other evidence in support of and in opposition to the allegations of said complaints taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaints 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 had violated the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, and subsections (a), (d), (e), and (f) of section 2 of said Clayton Act, as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, on November 12, 1947, issued, and on November 14, 1947, served upon said respondent its order