

Complaint

48 F. T. C.

IN THE MATTER OF

DANIEL HUTTNER, DOING BUSINESS AS SANITARY
FEATHER CO.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5874. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951*

Where an individual engaged in the interstate sale and distribution of pillows—
Represented that certain pillows were composed entirely of duck down and that
such down was new and unused material, through such statements on the
labels attached thereto as "All New Material Consisting of Duck Down" or
"All New Material Consisting of Imported Duck Down";

The facts being that four pillows thus labeled were found to contain only 70.5,
72.2, 69.1, and 61.6 percent duck down, respectively, with the balance con-
sisting of duck feathers and feather fiber, and to consist also in substantial
part of used or secondhand feathers as distinguished from new and unused
ones;

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

Loesch, Scofield & Burke, of Chicago, Ill., 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 Daniel Huttner, an
individual doing business as Sanitary Feather Co., hereinafter re-
ferred to as respondent, has 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 Daniel Huttner, is an individual doing
business as Sanitary Feather Co., with his office and principal place of
business located at 5034 South State Street, Chicago, Ill.

PAR. 2. Respondent is now, and for several years last past, has
engaged in the sale of pillows to dealers for resale to the public.

Respondent causes and has caused his said pillows when sold to be
shipped from his place of business in the State of Illinois to dealers
located in various other States of the United States and maintains,

and at all times mentioned herein has maintained, a course of trade in his said pillows, in commerce, among and between the several States of the United States. His business in such trade has been and is substantial.

PAR. 3. In the course and conduct of his business, respondent causes labels to be attached to his pillows purporting to state and set out the composition and nature of the fillings of said pillows. Typical, but not all inclusive of these labels are the following:

ALL NEW MATERIAL CONSISTING OF
IMPORTED DUCK DOWN
ALL NEW MATERIAL CONSISTING OF
DUCK DOWN

PAR. 4. By means of the statements appearing on the labels of his said pillows, respondent represented that the fillings of the pillows labeled "All new material consisting of imported duck down" and the pillows labeled "All new material consisting of duck down" were composed entirely of new duck down, the undercoating of a waterfowl.

PAR. 5. The aforesaid statements are false, misleading, and deceptive. In truth and in fact the fillings of two pillows labeled "All new material consisting of imported duck down" were not composed entirely of new duck down but on the contrary contained approximately 15 and 14 percent feathers, respectively, substantial amounts of which were second-hand, and approximately 13 and 17 percent fiber, respectively. The fillings of two pillows labeled "All new material consisting of duck down" were not composed entirely of new duck down but on the contrary contained approximately 13 and 22 percent duck feathers, respectively, substantial amounts of which were second-hand, and approximately 26 and 8 percent fiber, respectively.

PAR. 6. By attaching the false, misleading, and deceptive labels to his pillows, respondent 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. 7. The use by the respondent of the false, misleading, and deceptive labels have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of his said pillows and to induce a substantial portion of the purchasing public to purchase respondent's said pillows because of such erroneous belief.

PAR. 8. 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.

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 Commission and Order to File Report of Compliance," dated August 16, 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 April 23, 1951, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Thereafter 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 respondent 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 conclusion based thereon and an order disposing of the proceeding. While counsel for respondent 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 (no answer having been filed by respondent) 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. The respondent, Daniel Huttner is an individual doing business under the name Sanitary Feather Co., with his office and principal place of business located at 5034 South State Street, Chicago, Ill.

182

Order

PAR. 2. Respondent is now, and for several years last past has been engaged in the sale of pillows, the pillows being sold to dealers for resale to the public. Respondent causes and has caused his pillows, when sold, to be shipped from his place of business in the State of Illinois to purchasers in various other States of the United States. Respondent maintains and has maintained a course of trade in his pillows in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his business respondent attaches to his 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. Labels attached to certain pillows read "All New Material Consisting of Duck Down" or "All New Material Consisting of Imported Duck Down," thereby representing that such pillows were composed entirely of duck down, the undercoating of ducks, and that such down was new and unused material. Of four pillows so labeled one was found to contain only 61.6 percent duck down, 8.2 percent duck feathers, and approximately 26 percent feather fiber. Another contained only 70.5 percent duck down, 17.8 percent duck feathers, and 7.5 percent feather fiber. A third contained only 72.2 percent duck down, 11 percent duck feathers, and approximately 13 percent feather fiber. And the fourth contained only 69.1 percent duck down, 10.1 percent duck feathers, and approximately 17 percent feather fiber. Moreover, in each of these instances the feather content consisted in substantial part of used or second-hand feathers as distinguished from new and unused feathers.

PAR. 4. The acts and practices of respondent as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's products, and the tendency and capacity to cause such portion of the public to purchase respondent's products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent 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 respondent, Daniel Huttner individually and trading under the name Sanitary Feather Co. or trading under any

Order

48 F. T. C.

other 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 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 respondent's pillows are made.
2. Representing as composed of new material any pillow which is in fact composed in whole or in part of used or second-hand material.

ORDER TO FILE REPORT OF COMPLIANCE

It is order, That the respondent herein 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 the order to cease and desist [as required by said declaratory decision and order of August 16, 1951].

Complaint

IN THE MATTER OF

H. T. POINDEXTER & SONS MERCHANDISE CO.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5875. Complaint, Apr. 23, 1951—Decision, Aug. 16, 1951

Where a corporation engaged in the introduction into commerce, and in the offer, sale and distribution therein, of "wool products" as defined in the Wool Products Labeling Act of 1939—

Misbranded certain of said products in that, labeled as 100 percent wool, they contained no "wool" as defined in said act, but were composed, exclusive of ornamentation not exceeding 5 percent of their total fiber weight, of "reprocessed wool"; their constituent fibers and the percentages thereof were not shown on the tags or labels thereon, as required, since composed, as above noted, wholly of "reprocessed wool"; and constituent fibers of interlinings were not separately set forth upon the tags or labels attached thereto:

Held, That such acts and practices, under the circumstances set forth, were in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder, and were to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

While the complaint also charged that respondent removed from certain wool products, theretofore delivered to it, tags or labels purporting to contain the information required by said Wool Products Labeling Act, with intent to violate the provisions of the Act, and the stipulation established the fact of removal of the labels, it did not establish the element of intent, which was negatived by affidavits executed by certain of respondent's employees; and intent being an essential element where removal of labels is charged, it was concluded that said charge in the complaint was not sustained.

Before *Mr. William L. Pack*, trial examiner.

Mr. B. G. Wilson for the Commission.

Mr. Wm. K. Poindexter, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that H. T. Poindexter & Sons Merchandise Co., a corporation hereinafter referred to as respondent, has violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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: