

Complaint

IN THE MATTER OF

HAUPTMAN FEATHER COMPANY, INC., 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 5832. Complaint, Dec. 8, 1950—Decision, Aug. 17, 1951

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

Misrepresented the materials of which their pillows were made through attaching thereto labels which represented said materials, respectively, as "50 percent White Goose Down, 50 percent White Goose Feathers"; as "Down"; as "25 percent Duck Down, 75 percent Duck Feathers"; and as "50 percent Down, 50 percent Duck Feathers";

The facts being that the first pillow contained only 33.9 percent white goose down, 47 percent white goose feathers and other materials; that labeled "Down" contained only 43.2, instead of 100 percent thereof, the third contained 10 percent duck down, 78.5 percent duck feathers and other materials; and the fourth contained only 25.4 percent down and 57 percent feathers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their products and thereby cause it to purchase the same:

Held, That such act 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 Hauptman Feather Co., Inc., a corporation, and Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz, 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 Hauptman Feather Co., Inc., 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 73-75 Wallabout Street, Brooklyn, N. Y. Respondents Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz are the president, secre-

Complaint

48 F. T. C.

tary, and treasurer, respectively, of said corporate respondent. Said individual respondents have at all times mentioned herein 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 been engaged in the sale of pillows to dealers for resale to the public.

Respondents caused 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 course of trade in their said pillows, in commerce, among and between the several States of the United States. Their business in such trade has been and is substantial.

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 composition of the filling of said pillows. Typical, but not all inclusive of these labels, are the following:

"50% White Goose Down—50% White Goose Feathers," said pillow being designated as "Madison".

"Down," said pillow being designated as "Imperial".

"25% Down—75% Duck Feathers," said pillow being designated as "Style #D".

"50% Down—50% Duck Feathers," said pillow being designated as "Style #C".

PAR. 4. By means of the statements appearing on the labels of said pillows, respondents represented that the filling of the pillow designated "Madison" was composed of 50 percent white goose down, the undercoating of a waterfowl, and 50 percent white goose feathers; that the filling of the pillow designated "Imperial" was composed entirely of down, the undercoating of waterfowl; that the filling of the pillow designated "Style #D," was composed of 25 percent down, the undercoating of waterfowl, and 75 percent duck feathers; and that the filling of the pillow designated as "Style #C" was composed of 50 percent down, the undercoating of waterfowl, and 50 percent duck feathers.

PAR. 5. The statements appearing on the labels, as aforesaid, are false, misleading, and deceptive. In truth and in fact, the filling of the pillow designated as "Madison" consisted of 33.9 percent white goose down, 54.7 percent goose feathers, 6.8 percent feather fiber, and the balance of other materials. The filling of the pillow designated as "Imperial" was composed of 33.6 percent duck feathers, 43.2 percent down, and 23.2 percent feather fiber. The filling of the pillow designated as "Style #D" contained 11.5 percent feather fiber in addi-

tion to down and duck feathers and the filling of the pillow designated as "Style #C" contained 25.4 percent down, 57 percent duck feathers, and 17.6 percent feather fiber.

PAR. 6. 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. 7. The use by the respondents of the false, misleading and deceptive statements on the labels of their said products had, and now has, 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 their pillows because of the erroneous belief engendered by such statements.

PAR. 8. 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 17, 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 December 8, 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 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 conclusion based thereon and an order disposing of the proceeding. While counsel for respondents reserved in the stipulation the right

Findings

48 F. T. C.

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 Hauptman Feather Co., Inc., 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 73-75 Wallabout Street, Brooklyn, N. Y. Respondents Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz are president, secretary, and treasurer, 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 pillows 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 "50% White Goose Down, 50% White Goose Feathers" actually contained only 33.9 percent white goose down and 47 percent white goose feathers, the remaining content being other materials. In another instance the label on a pillow read simply "Down," thereby representing that such pillow was composed entirely of down, the undercoating of waterfowl, whereas the pillow actually contained only 43.2 percent down, the remaining content being duck feathers and other materials. In a third instance a pillow labeled "25% Duck Down, 75% Duck Feathers" contained only 10 percent duck

197

Order

down and 78.5 percent duck feathers, the remaining content being other materials. In a fourth instance a pillow labeled "50% Down, 50% Duck Feathers" contained only 25.4 percent down and 57 percent duck feathers, together with certain other materials.

PAR. 4. 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, Hauptman Feather Co., Inc., a corporation, and its officers, and Mitchell Hauptman, Abraham Hauptman, and Jean Rabinowitz, 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:

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

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 17, 1951].

IN THE MATTER OF

CLAY SEWER PIPE ASSOCIATION, INC.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914 AS AMENDED BY AN ACT APPROVED JUNE 19, 1936; AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5484. Complaint, Feb. 14, 1947—Decision, Aug. 20, 1951

Where an association of 12 manufacturers of vitrified clay sewer pipe, provided its members with a freight rate service and other assistance in the furtherance of their common plan to eliminate competition in the sale and distribution of their product between and among themselves; and said members and 5 other manufacturers, together operating about 25 plants in Michigan, Ohio, and Pennsylvania; in competition with one another except as below set forth—

- (a) Unlawfully cooperated among themselves in adopting and continuing a planned common course of action, whereby competition in the sale and distribution of their product was restrained and prevented; and pursuant thereto—
 - (1) By combination fixed and maintained prices for vitrified clay sewer pipe and fittings;
 - (2) In combination composed and announced prices for said products at all destinations at which they sold, through use of their basic "Eastern" or "Standard" Price List, and through a freight rate compilation showing certain rates from Akron to destinations in their trade areas; and the practice of announcing prices at any given destination in terms of percentage discounts from said basic list on the basis of the carload freight rate to the zone in which destination was located;
 - (3) By combination established and maintained uniform terms and conditions of sale to dealers and the allocation of sales between themselves and dealers; and
 - (4) By combination established and maintained a list of jobbers and the terms and conditions of sale thereto, and allocated sales between themselves and jobbers; and

Where the aforesaid members—

- (b) By combination maintained and used said association as a medium for promoting, aiding and rendering more effective such concerted efforts to suppress and eliminate competition; and

Where said various manufacturers—

- (c) By combination contributed to the accomplishment and effectiveness of the aforesaid acts and results in that they—
 - (1) Made simultaneous use, by two or more of them, of a zoning method of computing, formulating, and using delivered price quotations; and
 - (2) Discriminated in price between or among their respective customers by systematically charging and accepting prices which differed by the amounts necessary to produce delivered costs identical with those available from other respondent manufacturers;