

IN THE MATTER OF
THE SALISBURY COMPANY ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6161. Complaint, Feb. 2, 1954—Decision, June 30, 1955

Order requiring a manufacturer in Minneapolis, Minn., to cease misrepresenting the down and feather content of its pillows on labels affixed thereto or otherwise.

Mr. Ames W. Williams for the Commission.

Faegre & Benson, of Minneapolis, Minn., and *Davidson, Cohen & Zelkin*, of New York City, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce.

After the filing of an answer, hearings were held, in which testimony and other evidence was presented, duly recorded and filed in the office of the Commission. By stipulation all the evidence in the companion feather cases was made a part of the record in this case, except so far as such evidence relates exclusively to the identification, contents and analyses of the feather samples in each of those cases.¹ Proposed findings of fact, conclusions and order have been submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondent, The Salisbury Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 1042 Second Avenue, S. E., Minneapolis, Minnesota. Respondents W. R. Salisbury, E. D. Salisbury, Fred Salisbury and Maurice E. Salisbury are the officers of said corporate respondent.

2. Respondents are now, and for more than one year last past have been, engaged in the manufacture and sale of pillows, and other prod-

¹ The Companion feather cases are: Docket 6132, National Feather & Down Company; Docket 6133, The L. Buchman Co., Inc., et al.; Docket 6134, Burton-Dixie Corp., et al.; Docket 6135, N. Sumergrade & Sons, et al.; Docket 6137, Northern Feather Works, Inc., et al.; Docket 6161, The Salisbury Co., et al.; Docket 6188, Globe Feather & Down Co., et al.; and Docket 6208, Sanitary Feather & Down Co., Inc., et al.

ucts, designated as feather and down products, to dealers for resale to the public. Said respondents have caused and now cause said products, when sold, to be shipped from their place of business to purchasers thereof located in various other States of the United States.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said feather and down products, in commerce, among and between the various States of the United States.

3. In the course and conduct of their aforesaid business, said respondents are now, and have been, in substantial competition in commerce with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of feather and down products, including pillows.

4. In the course and conduct of their aforesaid business, respondents have caused labels to be affixed to certain of their pillows purporting to state and set out the kinds or types and proportions thereof of filling material contained therein. On these labels, respondents have made representations with respect to their pillows designated "Crown," as follows:

All New Material Consisting of Goose Feathers;

and with respect to their pillows designated "Royal Slumber":

All New Material Consisting of Down;

and with respect to their pillows designated "Swan Down":

All New Material Consisting of White Goose Down;

and with respect to their pillows designated "Premium":

All New Material Consisting of 50% Goose Down and 50% Downy Feathers.

5. Through the use of the aforesaid statements, said respondents have represented that the filling material in the pillows designated "Crown" is composed wholly of new goose feathers; that the filling material of the pillows designated "Royal Slumber" is composed wholly of new down; that the filling material of the pillows designated "Swan Down" is composed wholly of new white goose down; and that the filling material of the pillows designated "Premium" is composed of 50% new goose down and 50% new downy feathers.

6. Two pillows of each of the above-mentioned designations were procured by a representative of the Commission at the same time from the same retail dealer, and were introduced in evidence. The contents of these pillows were analyzed by an expert for the Commission; respondents made no analyses thereof. The analyses made by the Commission's expert showed as follows:

Decision

51 F. T. C.

Pillows designated "Crown"

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	7.7	4.4	5.55
Goose feathers.....	19.8	21.2	20.5
Damaged feathers.....	9.4	14.2	11.8
Second-hand feathers.....	18.1	10.9	14.5
Chicken feathers.....	5.2	3.1	4.15
Duck feathers.....	1.4	None	.7
Fiber.....	35.4	43.7	39.55
Pith and scale.....	3.0	2.5	2.75
Amount analyzed.....	<i>Grams</i> 4.531	<i>Grams</i> 5.375	

Pillows designated "Royal Slumber"

	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	70.0	68.0	69.0
Feathers (small).....	19.0	17.4	18.2
Damaged feathers (small).....	7.0	8.3	7.65
Fiber.....	2.6	5.3	3.95
Pith and scale.....	1.4	1.0	1.2
Amount analyzed.....	<i>Grams</i> 3.483	<i>Grams</i> 3.363	

Pillows designated "Swan Down"

	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	74.3	67.9	71.1
Feathers.....	15.6	18.7	17.15
Fibers.....	8.0	11.2	9.6
Pith and scale.....	2.1	2.2	2.15
Amount analyzed.....	<i>Grams</i> 3.2490	<i>Grams</i> 3.270	

Pillows designated "Premium"

	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	27.7	23.3	25.5
Goose feathers.....	23.4	24.3	23.85
Second-hand feathers.....	17.4	10.4	13.9
Damaged feathers.....	9.4	9.3	9.35
Chicken feathers.....	1.6	0.7	1.15
Duck feathers.....	.9	None	.45
Fiber.....	18.1	30.4	24.25
Pith and scale.....	1.5	1.6	1.55
Amount analyzed.....	<i>Grams</i> 4.900	<i>Grams</i> 5.173	

7. In determining whether or not the representations as to the pillow contents are false within the meaning of the Act, it is helpful to have an understanding of the manufacturing methods used in the feather industry.

(1) In general, three sources of feather supplies are or have been available:

(a) *The American Source*

First, there are the domestic feathers, which ordinarily are properly labeled, but are not available in sufficient quantities to meet the industry's requirements.

(b) *The European Source*

Second, there is the European source of supply from which feathers are procured, but from this source it is impossible to get unadulterated, new stock, because of a common practice of mixing second-hand feathers with new. European feathers are purchased on the basis of samples, and each manufacturer must judge from these samples the quality and type of feathers available to him.

(c) *The Oriental Source*

The third source is the Orient, from which adequate supplies may be had; but in the Orient there is no careful sorting, and a bale of feathers purchased as goose feathers may contain substantial quantities of duck or chicken feathers. These feathers are usually purchased through importers and commission merchants who submit offers to manufacturers. A typical offer will show as available for purchase by respondents or other pillow manufacturers 100 bales of 200 pounds each at 90¢ per pound, the feathers being Formosan grey goose feathers, 90% clean, maximum 20% duck feathers, 5% chicken feathers, 3% quills, minimum 30% down. Oriental feathers are purchased on the basis of these representations, without sampling.

(2) After raw feathers are procured by the manufacturer they are thoroughly washed, dried and fluffed up. Then they are sorted by means of a machine which separates the various constituents of the feather bulk by a blowing or suction process. The feathers are put through the sorting machine in lots of fifty pounds. The down, being lighter, is more readily blown over the baffle in the sorting machine, and passes into its particular bin or container. Then follow the downy-type feathers, and the various other feathers, in appropriate classifications according to weight or specific gravity, each into a specially prepared container. By this process it is reasonably practical to segregate a high percentage of down, but in down, as in the other classifications, there are always some feathers which are inappropriate to the particular classification. In the down-type feather receptacle will be some pure down and some heavier-type feathers. Similar discrepancies will occur in each of the other classifications.

It is impossible to separate feathers according to type of fowl or to remove inferior or second-hand feathers. The only possible separations are those which can be obtained by the application of the principles of specific gravity. Feathers of the same degree of lightness will go over the baffle at the same time, irrespective of the kind of fowl from which they may have been plucked, or whether they are new or used.

(3) The down and feathers thus sorted and placed in separate containers have no uniformity or homogeneity; the heavier feathers will be at the bottom, the down at the top of each container. Although there be a vigorous agitation of the feathers and down in a storage bin, the resulting mixture will at no time be of uniform content throughout, and no mixture of feathers and down is or will remain uniform or constant throughout its bulk. When a pillow order is to be made up, the manufacturer puts into the filling bin the number of bags of each type of feather requisite to obtain the desired mixture. The filling bins usually are approximately 5 x 10 x 12 feet in size, and hold up to 350 or 400 pounds of feathers. Two or three hundred pairs of pillows may be filled out of one mixture, and it is not unusual for a manufacturer to fill from twelve to fourteen hundred pairs of pillows during a day.

(4) During the filling process, the feathers are agitated by means of wooden forks, and the pillows are filled by suction. The proportion of down and feathers that go into each pillow depends partly, of course, upon the filling-bin mixture, but also to a large extent upon what part of the bin the filling suction reaches. Even with the exercise of the greatest care, pillows filled from the same bin will vary in content. Those being filled from the bottom of the bin will contain the heavier feathers, and the greater amounts of pith, scale, and other extraneous matter. The exact amount or proportion of down and feathers going into any particular pillow cannot be controlled by mechanical means. The expert whose testimony was presented in support of the complaint stated that the contents of pillows filled from the same bin will vary as much as 30%; that the same percentage will not be found in any two pillows; that the mixture in each pillow will vary from the mixture in the filling bin; that if any one pillow should contain exactly the same percentage of feathers and down as that originally placed in the filling bin, it would be pure accident; and that the closest practical indication of the contents of a pillow product of a manufacturer and the correctness of its labeling will result if several different pillows are sampled, preferably pillows obtained at different times and places.

(5) The same difficulties arise in analyzing the contents of a single pillow. Except by pure accident, no two samples will have the same content; so there is no sure or positive method of measuring the contents of feather pillows with scientific accuracy, other than by taking all of the content out of the pillow and separating it into its component elements, then weighing each element. Such a process is so completely impractical that, usually, a test is made by opening the pillow-ticking and taking samples from three different portions of the pillow. These samples are thoroughly mixed and a smaller testing sample, of which the analysis is to be made, is taken from this mixture. The expert who testified in support of the complaint selected three samples from the opening by inserting his hand and reaching to different portions of the pillow. The average sample for analysis weighed approximately 3 grams, representing between $\frac{1}{4}$ and $\frac{1}{2}$ of 1% of the contents of a pillow, and the appearance of a single heavy feather in a sample of this size would make as much as 4% difference in the final result. This method is far from satisfactory, and the resulting percentages are not conclusive.

(6) The crushing or curling process is a manner of giving a twist or curl to landfowl feathers, such as chicken and turkey, to increase their resiliency and tend to prevent their matting, and thus improve their quality for use as pillow-filling material. The same process is applied to waterfowl quill feathers (that is, feathers from the wings and tails of ducks and geese), which otherwise would not be suitable for pillow-filling material. A considerable amount of fiber, pith and scale result from the crushing, and are carried over into the filling mixture. As to utility, crushed landfowl feathers are better than crushed waterfowl feathers, and crushed turkey feathers are better than crushed chicken feathers.

The mixture of crushed feathers is made by weighing out the proper proportions of the various kinds of crushed feathers that are to be mixed, and taking alternate handfuls of feathers from the separate containers and throwing these into the hopper of the curling or crushing machine. Because of the nature of these larger feathers, they frequently go through the hopper in lumps, so that it is impossible to get a mixture with any degree of homogeneity. Despite agitation in mixing, slugs of chicken or turkey feathers and slugs of quill feathers will get into the pillows without ever being separated or mixed. The label "Crushed Feathers," showing the types of feathers used, can indicate no more than that the mixture was made from the types or kinds of feathers stated on the label.

It is impossible to separate and analyze crushed feathers accurately. A pillow filled with crushed feathers is the cheapest product of the industry, and in the minds of the general public, there is very little distinction among the various kinds of crushed feathers, whether goose, duck, chicken or turkey. The expert who testified in support of the complaint indicated that pillows filled with crushed feathers are the least desirable of all pillows, and are the lowest class of pillows on the market. In his opinion, it is impractical to attempt to distinguish between the various types of crushed feathers in any batch of such pillows, and he suggested during the course of his tests for the Commission that no further pillows filled with crushed feathers be sent to him for analysis.

(7) On the basis of the foregoing, the conclusion is inescapable that as a practical matter, the contents of feather pillows cannot be accurately labeled. In fact, to require accurate labeling as to content, of a product such as feather pillows, which, by nature, vary constantly and at random in content, is to require an impossibility. No manufacturer of feather pillows could comply with such a requirement except by analyzing the filling of each pillow individually. Obviously that is an impossible task. Incidentally, it points up the dangers involved in attempting to reach a conclusion as to pillow content on the basis of testing two pillows out of a batch that may have included one hundred or two hundred pairs of pillows.

(8) Despite these facts, however, some 28 States have labeling requirements with which pillow manufacturers must comply; and the Federal Trade Commission, on April 26, 1951, promulgated Trade Practice Rules for the Feather and Down Products Industry, which undertake to interpret the Act and express the Commission's policy with respect to the practices complained of in this proceeding. Although these Rules are not binding upon the hearing examiner, they should be given careful consideration in applying the law to the facts of this proceeding. The pertinent parts of those Rules applicable thereto are as follows:

**RULE 3—IDENTIFICATION AND DISCLOSURE OF KIND AND TYPE OF FILLING MATERIAL
IN INDUSTRY PRODUCTS**

I. In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to misrepresent or deceptively conceal the identity of the kind or type of filling material contained in any of such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type. Such identification and disclosure shall be made by tag or label securely affixed to the outside covering of each product and in invoices and all advertising and trade promotional literature relating to the product; and when the filling material is a mixture of more than one kind or

1380

Decision

type, each kind and type shall either be listed in the order of its predominance by weight, or be listed with an accompanying disclosure of the fraction or percentage by weight of the entire mixture which it represents.

II. Identification of the kind and type of feather and down stock by use of any of the terms listed and defined below will be considered proper when in accord with the definition set forth for such term:

Definitions:

(a) *Down*: The undercoating of waterfowl, consisting of clusters of the light, fluffy filaments growing from one quill point, but without any quill shaft.

(b) *Down fiber*: The barbs of down plumes separated from the quill points.

(c) *Waterfowl feathers*: Goose feathers, duck feathers, or any mixture of goose and duck feathers.

(d) *Feathers* (or *Natural Feathers*): Bird or fowl plumage having quill shafts and barbs and which has not been processed in any manner other than by washing, dusting, and sterilizing.

(e) *Quill feathers* (or *Quills*): Wing feathers or tail feathers or any mixture of wing and tail feathers.

(f) *Crushed feathers*: Feathers which have been processed by a crushing or curling machine which has changed the original form of the feathers without removing the quill.

* * * * *

(h) *Feather fiber*: The barbs of feathers which have been completely separated from the quill shaft and any aftershaft and which are in nowise joined or attached to each other.

* * * * *

(j) *Damaged feathers*: Feathers, other than crushed, chopped, or stripped, which are broken, damaged by insects, or otherwise materially injured.

III. *Tolerance*: (a) Subject to the restrictions and limitations hereinafter set forth, the filling material of an industry product may be represented as being of but one kind or type when 85% of the weight of all filling material contained in the product is of the represented kind or type; or may be represented as being of a mixture of two or more kinds or types with accompanying disclosure of a fraction or percentage of the weight of the entire mixture represented by each if the fraction or percentage shown is not at variance with the actual proportion of the weight of the entire mixture represented by each such kind or type by more than 15% of the stated fraction or percentage. (The tolerance provided for in this paragraph III is to be understood as being an allowance for error and as not embracing any intentional adulteration.)

Limitations and Restrictions

(b) When the filling material of an industry product is represented, directly or indirectly, as being wholly of down, any proportion within the tolerance percentage provided for in (a) above which is not down shall consist principally of down fiber and/or small, light, and fluffy waterfowl feathers, shall contain no quill feathers, crushed feathers, or chopped feathers, and shall not contain damaged feathers, quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material contained in the product, or which in the aggregate exceeds 5% of such weight.

* * * * *

Decision

51 F. T. C.

(e) When the filling material of an industry product is represented, directly or indirectly, as being wholly of a mixture of down and feathers, or of down and more than one kind or type of feathers, or of feathers of more than one kind or type, any proportion, or the aggregate of any proportions, of the filling material of the product at variance with the representation, but within the tolerance percentage provided for in (a) above, shall not contain quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless nondeceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of crushed feathers, chopped feathers, quill feathers, or damaged feathers.

Note.—It is the consensus of the industry that determination as to whether any representation is violative of the provisions of this Rule should be based on an average of the results of tests of at least two products of the same type when same are readily available for testing, * * *.

RULE 5—SECOND-HAND FEATHERS, DOWN, AND OTHER COMPONENTS

To offer for sale, sell, or distribute any industry product containing any component which has previously been used in any product, or used for any purpose, without clearly disclosing that fact in describing, advertising, labeling, invoicing and selling such product, and in all representations concerning the product, is an unfair trade practice. It is likewise an unfair trade practice to misrepresent or deceptively conceal the type, kind, or amount of such components, or to use with reference to said products descriptive words, phrases, labels, or other representations which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the effect on said material of such prior use or concerning the type, extent, method, or effect of any reprocessing, renovation, or resterilization of such material.

The Rules further provide that samples of equal weight and size be drawn from at least three different locations in the product; that such samples be thoroughly mixed; and that a test be made of not less than 3 grams of the mixture. Application of the law and a reasonable interpretation of these Rules to the facts of this proceeding results in the following:

Conclusions:

I. The test procedures adopted and followed by the expert who made the analyses of the pillow contents in this proceeding comply with the Trade Practice Rules.

II. The complaint charges that the respondents' representations as to the contents of their "Crown" pillows are false and deceptive in that "Crown" pillows contain substantial quantities of material other than new goose feathers, whereas the labels on these pillows represent that they contain all new goose feathers. This charge has been sustained beyond doubt by reliable, probative and substantial evidence.

Respondents submitted no evidence of any tests as to the contents of their pillows. An average of the two analyses made by the expert

whose testimony was presented to support the charges contained in the complaint shows that besides new goose feathers these pillows contained, among other elements, 14.5% second-hand feathers, 39.55% fiber, and 11.8% damaged feathers; the total goose-feather content which could clearly be considered new was 20.5%. Respondents' representations were, clearly, false and deceptive.

III. As to respondents' pillows designated "Royal Slumber," which were labeled as containing all new down, the average of the two analyses made by the expert whose testimony was presented to support the charges contained in the complaint shows that these pillows contained, in addition to 69% down, 18.2% small feathers and 7.65% damaged small feathers, with 3.95% fiber and 1.2% pith and scale. Ignoring these latter two components, there was a total of 25.85% small-feather content.

The reliable, probative and substantial evidence establishes the fact that these pillows were mislabeled, and that respondents' representations with respect to them were false and deceptive.

IV. As to respondents' pillows designated "Swan Down," which were labeled as containing all new white goose down, the average of the two analyses made by the expert whose testimony was presented to support the charges contained in the complaint shows that these pillows contained, in addition to 71.1% down, 17.15% feathers, 9.6% fibers and 2.15% pith and scale.

The reliable, probative and substantial evidence establishes the fact that these pillows were mislabeled, and that respondents' representations with respect to them were false and deceptive.

V. Respondents' pillows designated "Premium" were labeled as containing all new material consisting of 50% goose down and 50% downy feathers. The complaint charges that these representations were false and misleading in that these pillows contained substantially less than 50% of each of these elements, and that the pillows contained second-hand filling materials not disclosed on the labels.

The average of the two analyses made by the expert whose testimony was presented to support the charges contained in the complaint shows down content of these pillows to be 25.5%, goose feathers content 23.85%, damaged-feather content 9.35%, second-hand-feather content 13.9%, with 24.25% fiber and small percentages of chicken feathers, duck feathers, and pith and scale.

The down content is clearly below the represented amount; the record shows that it would be improper to consider the 24.25% fiber as down. Even if damaged feathers were considered as new goose feathers, which is unrealistic, the total goose feather content would be only

33.20%, which is still substantially less than the label representation of 50% goose feather content.

Likewise, the 13.9% of second-hand feather content is substantial, but is not indicated on the label.

The reliable, probative and substantial evidence establishes the fact that these pillows were mislabeled, and that respondents' representations with respect to them were false and deceptive.

VI. The reliable, probative and substantial evidence does not establish that the four respondents, W. R. Salisbury, E. D. Salisbury, Fred Salisbury and Maurice E. Salisbury, as individuals, direct and dominate the policies, acts, practices and business affairs of the corporate respondent; hence the complaint should be dismissed as to them as individuals. As officers of the corporate respondent, they cannot escape responsibility.

VII. The labeling and representations hereinabove found to be false (conclusions II, III, IV and V, above) constitute unfair trade practices; are to the prejudice and injury of the public; and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce.

VIII. The use by respondents of the false and misleading statements on the labels affixed to their pillows has had and now has the tendency and capacity to mislead and deceive dealers and the purchasing public into the erroneous and mistaken belief that such statements are true, and to induce the purchase of substantial quantities of their said pillows because of such erroneous and mistaken belief.

IX. This proceeding is found to be in the public interest, and the following order is found to be justified:

It is ordered, That respondents The Salisbury Company, a corporation, W. R. Salisbury, E. D. Salisbury, Fred Salisbury and Maurice E. Salisbury, the officers of said corporate respondent, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of feather pillows or other feather and down products, do forthwith cease and desist from misrepresenting in any manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

It is further ordered, That the complaint herein, insofar as it relates to respondents W. R. Salisbury, E. D. Salisbury, Fred Salisbury and

1380

Appeal

Maurice E. Salisbury individually, be, and the same hereby is, dismissed.

ON APPEAL FROM INITIAL DECISION

By SECREST, COMMISSIONER:

This is one of a group of ten cases, all tried and considered together, involving the use on labels of allegedly false and deceptive representations with respect to the filling materials contained in feather and down pillows. The hearing examiner having filed his initial decision in which he found that the respondents have in fact mislabeled certain of their pillows and in which he included an order directing them to forthwith cease and desist from such practices, the respondents appealed. The case was heard on the appeal brief and opposing brief filed by counsel supporting the complaint and oral arguments of counsel.

Among the pillows manufactured and sold by respondents in commerce were certain pillows identified on their labels as containing new material consisting of goose feathers. Analyses of samples of the filling material contained in two of them showed that they were composed in substantial part of materials other than goose feathers. While the hearing examiner correctly concluded that the goose feather content of those pillows was deficient and that they were mislabeled, the hearing examiner in determining the percentages of goose feathers present excluded from his computations, among other matters, the quantities shown of second-hand feathers and certain feathers which were broken, damaged or slightly injured. Even though the allegedly damaged feathers and second-hand feathers had been included and considered as goose feathers, the amounts as there represented would not have brought the goose feather content into conformity with the labels. Hence, the hearing examiner's action in those respects did not constitute prejudicial error. Accordingly, no determination is required as to whether the record would adequately support conclusions that the content of broken, damaged, and injured feathers designated in each of the analyses under an aggregate percentage figure has in fact constituted damaged feathers as that term is understood in the feather and down industry. The Commission, furthermore, is of the view that the hearing examiner correctly found that certain of respondents' pillows contained substantial quantities of second-hand feathers and that the respondents' failure to reveal the presence thereof was deceptive and constituted mislabeling.

The remaining issues presented under the appeal are essentially similar to those considered in the matters of Burton-Dixie Corpora-

Final Order

51 F. T. C.

tion, et al., Docket No. 6134, and Bernard H. Sumergrade, et al., Docket No. 6135, in which the Commission has written opinions setting forth in some detail its views on the issues there involved. The similarity between those cases and the instant case renders the opinions in those cases equally applicable here and the Commission is of the view that the hearing examiner correctly concluded that respondents have misrepresented the contents of certain of their pillows in violation of the Federal Trade Commission Act and that the order to cease and desist contained in the initial decision is appropriate.

The appeal accordingly is denied and the initial decision is affirmed.

FINAL ORDER

The respondents having filed an appeal from the hearing examiner's initial decision in this proceeding; and the matter having been heard on briefs and oral argument, and the Commission having rendered its decision denying the appeal and affirming the initial decision:

It is ordered, That the respondents shall, within sixty (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 contained in the aforesaid initial decision.

Decision

IN THE MATTER OF

BURL J. LASER ET AL. TRADING AS GLOBE
FEATHER & DOWN COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6188. Complaint, Mar. 10, 1954—Decision, June 30, 1955

Order requiring manufacturers in Chicago, Ill., to cease misrepresenting the feather and down content of their pillows on labels affixed thereto or otherwise.

Mr. Ames W. Williams for the Commission.

Mr. Marshall M. Holleb, of Chicago, Ill., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce.

After the filing of an answer, hearings were held, in which testimony and other evidence was presented, duly recorded and filed in the office of the Commission. By stipulation all the evidence in the companion feather cases was made a part of the record in this case, except so far as such evidence relates exclusively to the identification, contents and analyses of the feather samples in each of those cases.¹ Proposed findings of fact, conclusions and order have been submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondents Burl J. Laser, Jorge Laser and Hattie Laser are co-partners trading as Globe Feather & Down Company, with their office and principal place of business at 1433 South Miller Street, Chicago, Illinois.

2. Respondents are now, and for more than one year last past have been, engaged in the manufacture of feather and down products, specifically pillows, which they sell to dealers for resale to the public.

Respondents have caused and now cause their pillows, when sold, to be transported from their place of business to purchasers thereof

¹ The companion feather cases are: Docket 6132, National Feather & Down Company; Docket 6133, The L. Buchman Co., Inc., et al.; Docket 6134, Burton-Dixie Corp., et al.; Docket 6135, N. Sumergrade & Sons, et al.; Docket 6137, Northern Feather Works, Inc., et al.; Docket 6161, The Salisbury Co., et al.; Docket 6188, Globe Feather & Down Co., et al.; and Docket 6208, Sanitary Feather & Down Co., Inc., et al.

Decision

51 F. T. C.

located in various other States of the United States. Respondents maintain and, at all times mentioned herein, have maintained a course of trade in said pillows in commerce among and between the various States of the United States.

3. In the course and conduct of their aforesaid business respondents are now, and have been, in substantial competition in commerce with other partnerships, firms, corporations and individuals engaged in the sale and distribution of feather and down products, including pillows.

4. In the course and conduct of their aforesaid business, respondents have caused labels to be affixed to certain of their pillows purporting to state and set out the kinds or types and proportions of filling materials contained therein, and have made representations with respect to their pillows designated "Little Boy Blue," as follows:

ALL NEW MATERIAL consisting of
Imported White Goose Down,

and with respect to their pillows designated "Manchester,"

ALL NEW MATERIAL consisting of
50% Goose Down
50% Goose Feathers.

5. Through the use of the aforesaid statements, respondents have represented that the filling material in the pillows designated "Little Boy Blue" is composed wholly of new, imported white goose down, and that the filling material in the pillows designated "Manchester" is composed of 50% new goose down and 50% new goose feathers.

6. Two pillows of each of the above-mentioned designations were procured by a representative of the Commission at the same time from the same retail dealer, and were introduced in evidence. The contents of these pillows were analyzed by an expert for the Commission, and the contents of the two pillows designated "Little Boy Blue" were analyzed by an expert for the respondents. Respondents' expert made no analysis of the contents of the two pillows designated "Manchester." The analyses showed as follows:

Pillows designated "Little Boy Blue"

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
By the Commission's expert:	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Goose down.....	80.6	78.7	78.65
Goose feathers.....	18.0	19.3	18.65
Feather fiber.....	1.2	1.6	1.4
Pith and scale.....	.2	.4	.3
	<i>Grams</i>	<i>Grams</i>	
Amount analyzed.....	3.032	2.621	
By respondents' expert:	<i>Percent</i>	<i>Percent</i>	
Down and down fiber.....	89.3	88.8	89.05
White goose feathers.....	10.7	11.2	10.95

1393

Decision

Pillows designated "Manchester"

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
By the Commission's expert:	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Goose down.....	37.6	35.4	36.5
Goose feathers.....	49.0	46.8	
Immature goose feathers.....		1.9	48.7
Damaged feathers.....	7.9	9.1	48.85
Duck feathers.....	2.5	2.7	8.5
Chicken feathers.....	.4	1.2	2.6
Fiber.....	1.7	2.0	.8
Pith and scale.....	.9	.9	1.85
Amount analyzed.....	<i>Grams</i>	<i>Grams</i>	
Respondents' expert submitted no tests on these pillows..	5.634	5.356	.9

7. In determining whether or not the representations as to the pillow contents are false within the meaning of the Act, it is helpful to have an understanding of the manufacturing methods used in the feather industry.

(1) In general, three sources of feather supplies are or have been available:

(a) *The American Source*

First, there are the domestic feathers, which ordinarily are properly labeled, but are not available in sufficient quantities to meet the industry's requirements.

(b) *The European Source*

Second, there is the European source of supply from which feathers are procured, but from this source it is impossible to get unadulterated, new stock, because of a common practice of mixing second-hand feathers with new. European feathers are purchased on the basis of samples, and each manufacturer must judge from these samples the quality and type of feathers available to him.

(c) *The Oriental Source*

The third source is the Orient, from which adequate supplies may be had; but in the Orient there is no careful sorting, and a bale of feathers purchased as goose feathers may contain substantial quantities of duck or chicken feathers. These feathers are usually purchased through importers and commission merchants who submit offers to manufacturers. A typical offer will show as available for purchase by respondents or other pillow manufacturers 100 bales of 200 pounds each at 90¢ per pound, the feathers being Formosan grey goose feathers, 90% clean, maximum 20% duck feathers, 5% chicken feathers, 3% quills, minimum 30% down. Oriental feathers are purchased on the basis of these representations, without sampling.

(2) After raw feathers are procured by the manufacturer they are thoroughly washed, dried and fluffed up. Then they are sorted by means of a machine which separates the various constituents of the feather bulk by a blowing or suction process. The feathers are put through the sorting machine in lots of fifty pounds. The down, being lighter, is more readily blown over the baffle in the sorting machine, and passes into its particular bin or container. Then follow the downy-type feathers, and the various other feathers, in appropriate classifications according to weight or specific gravity, each into a specially prepared container. By this process it is reasonably practical to segregate a high percentage of down, but in down, as in the other classifications, there are always some feathers which are inappropriate to the particular classification. In the downy-type feather receptacle will be some pure down and some heavier-type feathers. Similar discrepancies will occur in each of the other classifications. It is impossible to separate feathers according to type of fowl or to remove inferior or second-hand feathers. The only possible separations are those which can be obtained by the application of the principles of specific gravity. Feathers of the same degree of lightness will go over the baffle at the same time, irrespective of the kind of fowl from which they may have been plucked, or whether they are new or used.

(3) The down and feathers thus sorted and placed in separate containers have no uniformity or homogeneity; the heavier feathers will be at the bottom, the down at the top of each container. Although there be a vigorous agitation of the feathers and down in a storage bin, the resulting mixture will at no time be of uniform content throughout, and no mixture of feathers and down is or will remain uniform or constant throughout its bulk. When a pillow order is to be made up, the manufacturer puts into the filling bin the number of bags of each type of feather requisite to obtain the desired mixture. The filling bins usually are approximately 5 x 10 x 12 feet in size, and hold up to 350 or 400 pounds of feathers. Two or three hundred pairs of pillows may be filled out of one mixture, and it is not unusual for a manufacturer to fill from twelve to fourteen hundred pairs of pillows during a day.

(4) During the filling process, the feathers are agitated by means of wooden forks, and the pillows are filled by suction. The proportion of down and feathers that go into each pillow depends partly, of course, upon the filling-bin mixture, but also to a large extent upon what part of the bin the filling suction reaches. Even with the exercise of the greatest care, pillows filled from the same bin will vary in

content. Those being filled from the bottom of the bin will contain the heavier feathers, and the greater amounts of pith, scale, and other extraneous matter. The exact amount or proportion of down and feathers going into any particular pillow cannot be controlled by mechanical means. The expert whose testimony was presented in support of the complaint stated that the contents of pillows filled from the same bin will vary as much as 30%; that the same percentage will not be found in any two pillows; that the mixture in each pillow will vary from the mixture in the filling bin; that if any one pillow should contain exactly the same percentage of feathers and down as that originally placed in the filling bin, it would be pure accident; and that the closest practical indication of the contents of a pillow product of a manufacturer and the correctness of its labeling will result if several different pillows are sampled, preferably pillows obtained at different times and places.

(5) The same difficulties arise in analyzing the contents of a single pillow. Except by pure accident, no two samples will have the same content; so there is no sure or positive method of measuring the contents of feather pillows with scientific accuracy, other than by taking all of the content out of the pillow and separating it into its component elements, then weighing each element. Such a process is so completely impractical that, usually, a test is made by opening the pillow-ticking and taking samples from three different portions of the pillow. These samples are thoroughly mixed and a smaller testing sample, of which the analysis is to be made, is taken from this mixture. The expert who testified in support of the complaint selected three samples from the opening by inserting his hand and reaching to different portions of the pillow. Samples selected by the respondents were obtained by taking a small quantity of feathers from each of three openings in each pillow. The hearing examiner was present when respondents' samples were taken. As each opening was made in the pillow ticking, some down escaped, and as each withdrawal was made, more down escaped before the sample could be enclosed in a container; while the feathers, being heavier and bulkier, were easier to retain. No sample can be exactly representative of the original content of the pillow, just as the content of no one pillow can be exactly representative of the original mixture in the filling bin. The average sample for analysis weighed approximately 3 grams, representing between $\frac{1}{4}$ and $\frac{1}{2}$ of 1% of the contents of a pillow, and the appearance of a single heavy feather in a sample of this size would make as much as 4% difference in the final result. This method is far from satisfactory, and the resulting percentages are not conclusive.

(6) The crushing or curling process is a manner of giving a twist or curl to landfowl feathers, such as chicken and turkey, to increase their resiliency and tend to prevent their matting, and thus improve their quality for use as pillow-filling material. The same process is applied to waterfowl quill feathers (that is, feathers from the wings and tails of ducks and geese), which otherwise would not be suitable for pillow-filling material. A considerable amount of fiber, pith and scale result from the crushing, and are carried over into the filling mixture. As to utility, crushed landfowl feathers are better than crushed waterfowl feathers, and crushed turkey feathers are better than crushed chicken feathers.

The mixture of crushed feathers is made by weighing out the proper proportions of the various kinds of crushed feathers that are to be mixed, and taking alternate handfuls of feathers from the separate containers and throwing these into the hopper of the curling or crushing machine. Because of the nature of these larger feathers, they frequently go through the hopper in lumps, so that it is impossible to get a mixture with any degree of homogeneity. Despite agitation in mixing, slugs of chicken or turkey feathers and slugs of quill feathers will get into the pillows without ever being separated or mixed. The label "Crushed Feathers," showing the types of feathers used, can indicate no more than that the mixture was made from the types or kinds of feathers stated on the label.

It is impossible to separate and analyze crushed feathers accurately. A pillow filled with crushed feathers is the cheapest product of the industry, and in the minds of the general public, there is very little distinction among the various kinds of crushed feathers, whether goose, duck, chicken or turkey. The expert who testified in support of the complaint indicated that pillows filled with crushed feathers are the least desirable of all pillows, and are the lowest class of pillows on the market. In his opinion, it is impractical to attempt to distinguish between the various types of crushed feathers in any batch of such pillows, and he suggested during the course of his tests for the Commission that no further pillows filled with crushed feathers be sent to him for analysis.

(7) On the basis of the foregoing, the conclusion is inescapable that as a practical matter, the contents of feather pillows cannot be accurately labeled. In fact, to require accurate labeling as to content, of a product such as feather pillows, which, by nature, vary constantly and at random in content, is to require an impossibility. No manufacturer of feather pillows could comply with such a requirement except by analyzing the filling of each pillow individually. Obviously

that is an impossible task. Incidentally, it points up the dangers involved in attempting to reach a conclusion as to pillow content on the basis of testing two pillows out of a batch that may have included one hundred or two hundred pairs of pillows.

(8) Despite these facts, however, some 28 States have labeling requirements with which pillow manufacturers must comply; and the Federal Trade Commission, on April 26, 1951, promulgated Trade Practice Rules for the Feather and Down Products Industry, which undertake to interpret the Act and express the Commission's policy with respect to the practices complained of in this processing. Although these Rules are not binding upon the hearing examiner, they should be given careful consideration in applying the law to the facts of this proceeding. The pertinent parts of those Rules applicable thereto are as follows:

RULE 3—IDENTIFICATION AND DISCLOSURE OF KIND AND TYPE OF FILLING MATERIAL
IN INDUSTRY PRODUCTS

I. In the sale, offering for sale, or distribution of industry products, it is an unfair trade practice to misrepresent or deceptively conceal the identity of the kind or type of filling material contained in any of such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type. Such identification and disclosure shall be made by tag or label securely affixed to the outside covering of each product and in invoices and all advertising and trade promotional literature relating to the product; and when the filling material is a mixture of more than one kind or type, each kind and type shall either be listed in the order of its predominance by weight, or be listed with an accompanying disclosure of the fraction or percentage by weight of the entire mixture which it represents.

II. Identification of the kind and type of feather and down stock by use of any of the terms listed and defined below will be considered proper when in accord with the definition set forth for such term:

Definitions:

(a) *Down*: The undercoating of waterfowl, consisting of clusters of the light, fluffy filaments growing from one quill point but without any quill shaft.

(b) *Down fiber*: The barbs of down plumes separated from the quill points.

(c) *Waterfowl feathers*: Goose feathers, duck feathers, or any mixture of goose and duck feathers.

(d) *Feathers (or Natural Feathers)*: Bird or fowl plumage having quill shafts and barbs and which has not been processed in any manner other than by washing, dusting, and sterilizing.

(e) *Quill feathers (or Quills)*: Wing feathers or tail feathers or any mixture of wing and tail feathers.

(f) *Crushed feathers*: Feathers which have been processed by a crushing or curling machine which has changed the original form of the feathers without removing the quill.

* * * * *

Decision

51 F. T. C.

(h) *Feather fiber*: The barbs of feathers which have been completely separated from the quill shaft and any aftershaft and which are in nowise joined or attached to each other.

* * * * *

(j) *Damaged feathers*: Feathers, other than crushed, chopped, or stripped, which are broken, damaged by insects, or otherwise materially injured.

III. *Tolerance*: (a) Subject to the restrictions and limitations hereinafter set forth, the filling material of an industry product may be represented as being of but one kind or type when 85% of the weight of all filling material contained in the product is of the represented kind or type; or may be represented as being of a mixture of two or more kinds or types with accompanying disclosure of a fraction or percentage of the weight of the entire mixture represented by each if the fraction or percentage shown is not at variance with the actual proportion of the weight of the entire mixture represented by each such kind or type by more than 15% of the stated fraction or percentage. (The tolerance provided for in this paragraph III is to be understood as being an allowance for error and as not embracing any intentional adulteration.)

Limitations and Restrictions

(b) When the filling material of an industry product is represented, directly or indirectly, as being wholly of down, any proportion within the tolerance percentage provided for in (a) above which is not down shall consist principally of down fiber and/or small, light, and fluffy waterfowl feathers, shall contain no quill feathers, crushed feathers, or chopped feathers, and shall not contain damaged feathers, quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material contained in the product, or which in the aggregate exceeds 5% of such weight.

* * * * *

(c) When the filling material of an industry product is represented, directly or indirectly, as being wholly of a mixture of down and feathers, or of down and more than one kind or type of feathers, or of feathers of more than one kind or type, any proportion, or the aggregate of any proportions, of the filling material of the product at variance with the representation, but within the tolerance percentage provided for in (a) above, shall not contain quill pith, quill fragments, trash, or any matter foreign to feather and down stock in excess of 2% by weight of the filling material in the product or which in the aggregate exceeds 5% of such weight; and, unless nondeceptively disclosed in the representation, not in excess of 5% by weight of the filling material of the product shall consist of crushed feathers, chopped feathers, quill feathers, or damaged feathers.

Note.—It is the consensus of the industry that determination as to whether any representation is violative of the provisions of this Rule should be based on an average of the results of tests of at least two products of the same type when same are readily available for testing, * * *.

The Rules further provide that samples of equal weight and size be drawn from at least three different locations in the product; that such samples be thoroughly mixed; and that a test be made of not less than 3 grams of the mixture. Application of the law and a reasonable interpretation of these Rules to the facts of this proceeding results in the following:

1393

Decision

Conclusions:

I. The test procedures adopted and followed by the experts who made the analyses of the pillow contents in this proceeding comply with the Trade Practice Rules.

II. Respondents' pillows designated "Little Boy Blue" are represented as consisting of new white goose down. The complaint charges that this is false and misleading in that the filling material in these pillows contains a substantial amount of material other than white goose down.

The average of the test results submitted by respondents shows that these pillows contained 89.05% down and down fiber. There is support in the record for including down fiber as part of the down content, so these test results must be considered as valid. The average of the test results submitted by the Commission's expert shows down content as being 78.65%, exclusive of fiber and small downy-type feathers which are normally found in all-down pillows. The average of all four test results using this latter conservative figure shows down content as 83.85%. Taking into consideration the numerous variables involved, and the lack of absolute accuracy in any of these tests, this percentage is found not to be substantially outside the reasonable tolerances applicable to pillows of this type, and the conclusion is reached that the charges of the complaint have not been adequately established by reliable, probative and substantial evidence as to these pillows.

III. Respondents' pillows designated "Manchester" are represented as being 50% goose down and 50% goose feathers. Respondents submitted no test results as to contents of these pillows. The average of the analyses made by the Commission's expert shows the down content as 36.5%. Adding the 1.85% of fiber, this down content may be raised to 38.35%, which is approximately 23% less than the amount of down the pillows should contain. This is substantially greater than the allowable, reasonable tolerance of 15%, and cannot be justified. It is concluded, therefore, that these pillows have been mislabeled and that the representations made by respondents in respect thereto are false and misleading.

IV. The labeling and representations hereinabove found to be false (Conclusion III) constitute unfair trade practices; are to the prejudice and injury of the public; and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce.

V. The use by respondents of the false and misleading statements on the labels affixed to their pillows has had and now has the tendency and capacity to mislead and deceive dealers and the purchasing public

into the erroneous and mistaken belief that such statements are true, and to induce the purchase of substantial quantities of their said pillows because of such erroneous and mistaken belief.

VI. This proceeding is found to be in the public interest, and the following order is found to be justified:

It is ordered, That respondents Buryl J. Laser, Jorge Laser and Hattie Laser, copartners, trading as Globe Feather & Down Company, or under any other name, and their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of feather pillows or other feather and down products, do forthwith cease and desist from misrepresenting in any manner, or by any means, directly or by implication, the identity of the kind or type of filling material contained in any such products, or of the kinds or types, and proportions of each, when the filling material is a mixture of more than one kind or type.

ON APPEAL FROM INITIAL DECISION

By SECRET, Commissioner:

This is one of a group of ten cases, all tried and considered together, involving the use on labels of allegedly false and deceptive representations with respect to the filling material contained in feather and down pillows. The hearing examiner having filed his initial decision in which he found that the respondents have in fact mislabeled certain of their pillows and in which he included an order directing them to forthwith cease and desist from such practices, the respondents appealed. The case was heard on the appeal brief, an opposing brief filed by counsel supporting the complaint and oral arguments of counsel.

Except as to the results of the analyses of the different pillows used as exhibits, as to which the record in each of these cases is specific and definite, and except for the differences in the initial decisions, this case is not unlike that in the matter of Burton-Dixie Corporation, et al., Docket No. 6134, in which case the Commission has written an opinion setting forth in some detail its views on the various issues involved. In view of the similarity between these cases, the opinion in that case is equally applicable here, and for the reasons there stated the Commission is of the view that the hearing examiner's findings of fact and conclusions that the respondents have misrepresented the contents of certain of their pillows in violation of the Federal Trade Commission Act, and the order to cease and desist contained in the

1393

Final Order

initial decision are correct. For the same reasons, and for the additional reasons set forth in the decision in the matter of Bernard H. Sumergrade and Harry Sumergrade, copartners trading as N. Sumergrade & Sons, Docket No. 6135, the Commission is of the opinion, and finds, that the pillows referred to in Conclusion II of the initial decision, which pillows were represented as containing all new white goose down, but which actually contained an average of only 78.65%, were also mislabeled, and the hearing examiner's conclusion to the contrary and his reasoning in support thereof are rejected.

The respondents' appeal is accordingly denied and the initial decision as modified herein is affirmed.

FINAL ORDER

The respondents having filed an appeal from the hearing examiner's initial decision in this proceeding; and the matter having been heard on briefs and oral argument, and the Commission having rendered its decision denying the appeal and affirming the initial decision as modified;

It is ordered, That the respondents named in the initial decision shall, within sixty (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 contained in the aforesaid initial decision.

IN THE MATTER OF
COLUMBIA BEDDING COMPANY ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6189. Complaint, Mar. 11, 1954—Decision, June 30, 1955

Order requiring a manufacturer in Chicago, Ill., to cease misrepresenting the feather and down content of its pillows on labels affixed thereto or otherwise.

Mr. Ames W. Williams for the Commission.

Mr. James Perkins Parker, of Washington, D. C., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce.

After the filing of an answer, hearings were held, at which testimony and other evidence were presented, duly recorded and filed in the office of the Commission. Proposed findings of fact, conclusions and orders have been submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondent Columbia Bedding Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office located at 1750 North Wolcott Street, Chicago, Illinois. Respondents L. Gerald Koch (erroneously named in the complaint as L. Gerald Couch), president, George M. Silverthorne, Jr., vice president, and Thomas W. Hellyer, Secretary-treasurer, are the officers of said corporate respondent.

2. Respondent corporation, Columbia Bedding Company, maintains factories in Philadelphia, Chicago, Kansas City and Dallas, and for the past fifty years has engaged in the manufacture and sale of pillows and other products, designated as down and feather products, to dealers for resale to the general public, which products said respondent has caused, when sold, to be transported from the various places of manufacture to purchasers located in various other States of the United States; and has maintained a course of trade in the said products in commerce.

Respondents L. Gerald Koch, George M. Silverthorne, Jr., and Thomas W. Hellyer are engaged in the manufacture, sale and inter-