

Complaint

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IN THE MATTER OF

THE STANDARD MATTRESS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8135. Complaint, Oct. 7, 1960—Decision, Aug. 22, 1961*

Consent order requiring Hartford, Conn., distributors of mattresses to retailers for resale, to cease setting forth excessive amounts as usual retail prices on attached labels and in advertising material; using such terms as "10 year . . .", "15 year . . .", and "20 year registered guarantee" in advertising certain mattresses when the guarantees furnished were limited and conditional; stating falsely in advertising that a national survey had determined that "American Dream" mattress should sell for \$69.98; and representing falsely, by use of such terms as "Orthopedic Construction" and "Medic Rest" and otherwise, that their stock mattresses would correct bodily deformities and disorders; and to disclose clearly that use of their mattresses would relieve backache only when caused by sleeping on a soft mattress.

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 The Standard Mattress Company, a corporation, and N. Aaron Naboi-check, Louis H. Naboi-check and Max H. Kaminsky, 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 The Standard Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business located at 55 North Street in the City of Hartford, State of Connecticut.

Respondents N. Aaron Naboi-check, Louis H. Naboi-check and Max H. Kaminsky are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of mattresses to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of certain of their mattresses, have engaged in the practice of using fictitious prices in connection therewith, in representing that such products are guaranteed, have therapeutic properties, and have been chosen by consumers in a survey. Such representations have been made by respondents on the labels attached to said mattresses, and in advertising mats, window banners and other advertising materials furnished retail dealers. Among and typical of said practices are the following:

1. Setting out amounts on labels attached to certain of their mattresses, and in advertising material, thereby representing that said amounts were the usual and customary retail prices of certain of its mattresses. In truth and in fact, said amounts were fictitious and in excess of the prices at which such mattresses were usually and customarily sold at retail.

2. Using such terms as "10 year registered guarantee", "15 year registered guarantee" and "20 year registered guarantee" in the advertising of certain of their mattresses thereby representing that said mattresses were fully and unconditionally guaranteed for ten, fifteen and twenty years, respectively. In truth and in fact, the guarantees furnished in connection with said mattresses were limited and conditional in several respects, which limitations and conditions were not set out in the advertising.

3. Stating in newspaper advertising a national survey had determined that their "American Dream" mattress should sell for \$69.98. In truth and in fact, said mattress was not the subject of a survey and the price at which it should sell was not determined by a survey.

4. Using the statements, "Orthopedic Construction" and "Medic Rest" in the advertising of certain of their mattresses, thereby representing through the use of the words, "orthopedic" and "medic" that said mattresses are specially designed to, and that their use will, correct deformities and disorders of the human body. In truth and in fact, said mattresses are not so designed but are stock mattresses and their indiscriminate use cannot be relied upon to,

and will not, in fact, correct any deformity or disorder of the body.

5. Respondents use the following statement in newspaper advertisements regarding their "Sacro-Support De Luxe" mattress:

40 NIGHT TRIAL OFFER!

to prove backache* can disappear.

*Due To Sleeping On Too Soft A Mattress. (in small print)

The marginal note marked with an asterisk is so far removed from the statement it purports to explain and is so inconspicuous that it does not constitute adequate notice that respondents are referring therein only to backache caused by sleeping on a soft mattress.

PAR. 5. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of mattresses of the same general kind and nature as those sold by respondents.

PAR. 6. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, were and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Charles W. O'Connell supporting complaint.

Mr. Irving S. Ribicoff, Ribicoff and Kotkin, Hartford, Conn., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission duly issued its complaint in this matter against the respondents listed above on October 7, 1960. The complaint charged respondents with violating the Federal Trade Commission Act through the use of fictitious pricing and the issu-

ance of false, misleading and deceptive statements, representations, and practices in the sale of mattresses.

On May 31, 1961, counsel submitted to the undersigned hearing examiner an agreement for the entry of an order on consent without further notice dated May 24, 1961, and executed by respondents, their counsel and counsel supporting the complaint. Said agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by respondent parties of all jurisdictional facts alleged in the complaint.

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement further provides that subparagraph 4 of Paragraph Four of the Complaint herein insofar as it relates to the word "Sacro-Support" may be dismissed without prejudice on the grounds that the evidence is insufficient to substantiate the allegations set out therein with respect thereto.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for

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settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent The Standard Mattress Company is a corporation existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business located at 55 North Street, in the City of Hartford, State of Connecticut.

2. Respondents N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered. That respondents, The Standard Mattress Company, a corporation, and its officers, and N. Aaron Naboicheck, Louis H. Naboicheck and Max H. Kaminsky, 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, or distribution of mattresses or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, in any manner that certain amounts are the usual and customary retail prices of their mattresses or other merchandise when such amounts are in excess of the prices at which their mattresses or other merchandise are usually and customarily sold at retail in the trade area where such representation is made.

2. Representing, directly or by implication, that their mattresses or other merchandise are guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly set forth.

3. Representing, directly or by implication, that their mattresses or other merchandise have been the subject of a consumer survey or

that the retail price of such mattresses or other merchandise, or any other fact, has thereby been determined, unless such is the fact.

4. Using the word "orthopedic", or "medic" or any other term of like import as a designation or as descriptive of their stock mattresses.

5. Representing, directly or by implication, that their stock mattresses are specially designed to, and that their indiscriminate use will correct deformities and disorders of the human body.

6. Representing, directly or by implication, that use of respondents' mattresses prevents backache, unless it is clearly disclosed in immediate conjunction therewith, that such relief will be afforded only to users whose backaches result from using a soft mattress.

It is further ordered, That subparagraph 4 of Paragraph Four of the complaint, insofar as it relates to the word "Sacro-Support", be, and it hereby is, dismissed without prejudice.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 22d day of August 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.