

others containing any of the representations or misrepresentations prohibited by Paragraphs 1 through 3 of PART I of this Order.

It is further 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 this order.

IN THE MATTER OF
SEALY, INCORPORATED

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

Docket C-615. Complaint, Nov. 1, 1963—Decision, Nov. 1, 1963

Consent order requiring an association of 30 independent concerns licensed to manufacture and sell bedding products under the Sealy trade name and trade mark in exclusive territories throughout the United States, which conducted nationally advertised sales promotions of Sealy products through publications of national circulation and television broadcasts and by furnishing advertising material to said licensees for distribution to retail dealers, to cease representing falsely that in their "81st Anniversary Sale" their regular mattress and box spring combinations were reduced \$20; that their "Posturepedic" mattress was specially designed to assure correct posture during sleep and would prevent or correct posture defects and specific body deformities and accorded with recommendations of orthopedic authorities as to design for such deformities; and that professional shoppers from Willmark Research Corporation compared the advertised mattress with competing products and found it to be the best buy at the price.

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 Sealy, Incorporated, a corporation, hereinafter referred 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 Sealy, Incorporated, 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 666 North Lake Shore Drive in the city of Chicago, State of Illinois.

PAR. 2. Respondent Sealy, Incorporated, hereinafter referred to as Sealy, Inc., is an association of 30 independent persons, firms and corporations engaged in the business of manufacturing mattresses and other bedding products. Said manufacturers are franchised or licensed by Sealy, Inc., to manufacture and sell bedding products under the Sealy trade name and trademark in exclusive territories throughout the United States. Sealy, Inc., owns patents, trademarks, copyrights, processes, manufacturing methods and product designs for use in the manufacture of mattresses, box springs and other bedding products and originates and develops merchandising, sales and advertising programs for marketing said products. In return for the facilities and services furnished them by Sealy, Inc., the Sealy licensees pay an annual royalty based on a percentage of their sales. Under its merchandising program Sealy, Inc., conducts nationally advertised sales promotions of Sealy products through publications of national circulation, through television broadcasts and by furnishing advertising material to the said licensees for distribution to retail dealers for their use in inducing the sale of Sealy products.

PAR. 3. In the course and conduct of its business respondent now causes and for some time last past has caused advertising and promotional material to be shipped from its headquarters in Chicago, Illinois, to its licensees located in the various states of the United States. Respondent has further engaged in extensive commercial intercourse, in commerce, consisting of the transmission and receipt of letters, checks, reports, contracts, specifications and other documents of commercial nature between its headquarters and the licensees in the various states in furtherance of the sale and shipment of Sealy bedding products from the respective states in which they are manufactured to retail stores and other purchasers, in other states, for resale to consumers. Respondent maintains and at all times mentioned herein has maintained a substantial business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Furthermore, each of the aforesaid licensees ships and transports the said bedding products from the state in which each of their

Complaint

63 F.T.C.

several manufacturing plants is located into the various surrounding states located in their respective territories. Each of the said licensees maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. The aforesaid activities of respondent Sealy, Inc., are an intimate, integral part and extension of said licensees' trade in "commerce." Through the receipt of the said royalties, respondent Sealy, Inc., becomes an even more direct participant in said licensees' trade in "commerce."

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of Sealy bedding products, respondent has made statements in advertising mats, display cards and other common advertising material supplied to its licensees who have in turn furnished the same to retailers, and in common advertisements placed by respondent in magazines of national circulation, and in television and radio broadcasts transmitted by television and radio stations located in various states of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines respecting the price, savings, manufacture and therapeutic properties of said mattresses. Typical but not all inclusive of such statements are the following:

In respect to the "81st Anniversary Sale":

FIRST TIME BELOW NATIONALLY
ADVERTISED \$59.95 PRICE!
YOU GET FAMOUS FLEX GUARD QUALITY
\$20.00 OFF!

FIRST TIME BELOW NATIONALLY ADVERTISED	
PRICE OF.....	\$59.95
WITH NO REDUCTION IN QUALITY	
YOU SAVE.....	\$20.00

PAY ONLY
\$39.95

FOR THE FIRST TIME (TO CELEBRATE
SEALY'S 81ST ANNIVERSARY)
THE QUALITY OF SEALY'S
FAMOUS FLEX GUARD MATTRESS
IS YOURS BELOW THE NATION-
ALLY ADVERTISED PRICE OF
\$59.95. TWENTY DOLLARS
BELOW! THOUSANDS SOLD
AT \$59.95. NOW ONLY \$39.95!
MATCHING BOX SPRING ALSO \$39.95.
SAVE \$20.00 WITH NO REDUCTION
IN QUALITY.

1106

Complaint

REDUCED FIRST TIME EVER

In respect to the "Posturepedic" mattress:

CHOOSE THE COMFORT YOU PREFER * * *
EXTRA FIRM OR GENTLY FIRM IN THE NEW
 SEALY POSTUREPEDIC

BOTH GIVE YOU THE SAME
 "NO MORNING BACKACHE" SUPPORT

[Sealy trade
 mark showing
 female figure
 with her hand
 on the small
 of her back]

Everyone likes to be pampered; so indulge yourself on the posturepedic that's just right for you. If an added measure of firmness suits you best (or your doctor recommends it) choose the extra firm posturepedic. Like a gentler feel? Then try the gently firm Princess Posturepedic with a luxury layer of foam. Whatever your choice, rest assured that you're getting Posturepedic's famous healthful support—designed in cooperation with leading orthopedic surgeons.

SEALY POSTUREPEDIC * * * THE MATTRESS ORTHOPEDIC SURGEONS AND SLEEPY PEOPLE AGREE ON.

* * * THE SEALY POSTUREPEDIC, THE "NO MORNING BACKACHE MATTRESS". ORTHOPEDIC SURGEONS HELPED DESIGN IT AND THEY ARE THE ONES WHO KNOW THE MOST ABOUT PROPER SUPPORT FOR YOUR BODY WHEN YOU SLEEP.

THIS POSTUREPEDIC HAS THE EXTRA FIRMNESS THAT DOCTORS RECOMMEND AND MANY PEOPLE PREFER.

NO MORNING BACKACHE*; THEY SLEEP ON THE SEALY POSTUREPEDIC.

[The asterisk refers to an explanatory statement in the margin such as "No morning backache from a too-soft mattress."]

In respect to the "Willmark Survey":

You can't buy a better mattress at \$39.95 than this Sealy Shopped for value * * * verified for quality.

"I am one of the staff of professional shoppers from Willmark Research Corporation * * *

"After shopping and checking competitive brands in a nationwide survey of mattresses selling for \$39.95, we found that of all the brands checked none had all of these construction features that are incorporated in Sealy's 80th Anniversary Sale mattress:

DeLuxe decorator flocked ticking
 Button-free surface * * * No Bumps—No Lumps
 Sealy's exclusive Life Line Construction
 Good Housekeeping Money-Back Guaranty Seal
 Seal of Independent Testing Laboratory

After receiving shopping reports from all over the nation Sealy tabulated these and we are proud to report that this Sealy 80th Anniversary Mattress is

1961's BEST MATTRESS BUY AT \$39.95. Your shopping has already been done for you.

Willmark shopped and checked competitive features. Willmark, the nation's oldest point-of-sale research corporation has shopped and checked

Complaint

63 F.T.C.

competitive mattress features. On the basis of these findings, compiled from numerous checks, Sealy rates this mattress:

"Your best value at \$39.95"

Sealy—Rated

No. 1

Shopped—Tested—Verified

Rated No. 1 mattress

PAR. 5. By and through the use of the aforesaid statements respondent has represented and has placed in the hands of licensees and others the means and instrumentalities of representing, directly or indirectly:

1. Through the use of the statements in the advertisement respecting the "81st Anniversary" sale that the said "81st Anniversary" sale mattress and matching box spring being offered for \$39.95 apiece are the selfsame mattress and matching box spring theretofore offered for sale and sold under the brand name "Flex Guard" for \$59.95 apiece, that the usual and customary retail selling price of said "Flex Guard" mattress and box spring had been reduced from \$59.95 to \$39.95 apiece, and that a saving of \$20.00 was afforded to consumers in the purchase of each of said units at \$39.95 apiece.

2. Through the use of the brand name "Posturepedic" in conjunction with the various statements above set forth, relating to said mattress, that said Posturepedic mattress has been specially designed and constructed to assure and does in fact assure correct posture during sleep or that said mattress is capable of preventing or correcting or of contributing materially to the prevention or correction of posture defects or that said mattress has been specially designed and constructed so as to prevent, correct or afford substantial relief with respect to a specific body deformity or deformities and accords with recommendations of orthopedic authorities respecting design and construction for such deformity or deformities.

3. Through the use of the statements in respect to the "Willmark Survey" that the Willmark Research Corporation inspected and checked the Sealy mattress referred to in said advertisement for quality and value, compared the said mattress with competing mattresses and found the said Sealy mattress to be the best buy at \$39.95.

PAR. 6. In truth and in fact:

1. The Sealy "81st Anniversary" sale mattress and matching box spring offered for \$39.95 apiece were not the selfsame mattress and matching box spring theretofore offered for sale and sold under the brand name "Flex Guard" for \$59.95. The "81st Anniversary" sale mattress and matching box spring manufactured and sold by certain Sealy, Incorporated, licensees contained substantial differ-

ences in design and construction, such as fewer coils in the inner-spring unit, covers of a lighter weight material, and different kinds of padding. Therefore, consumers, in purchasing the "81st Anniversary" mattress and box spring, did not obtain the selfsame "Flex Guard" mattress and box spring as those "Flex Guard" units previously offered for sale and sold for \$59.95 apiece but obtained different units which had not been previously sold at all. The usual and customary retail selling price of said "Flex Guard" mattress and box spring had not been reduced from \$59.95 to \$39.95 apiece, and the saving of \$20.00 which was based on the previous sale of the "Flex Guard" units at \$59.95 apiece was, therefore, not afforded to consumers in purchasing the "81st Anniversary" sale mattress at \$39.95.

2. Respondent's said mattresses have not been specially designed and constructed to afford under all conditions and do not in fact afford under all conditions correct posture during sleep. Said mattresses are not capable of preventing or correcting or of contributing materially to the prevention or correction of posture defects. Said mattresses have not been specially designed and constructed so as to prevent, correct or afford substantial relief with respect to a specific body deformity or deformities and do not accord with recommendations of orthopedic authorities respecting design and construction for such deformity or deformities. Said "Posturepedic" mattresses are stock mattresses which are generally available and indiscriminately offered for sale and sold to the consuming public.

3. Willmark Research Corporation did not inspect or check the said Sealy mattress and made no evaluation of said mattress. It did not compare said Sealy mattress with mattresses of competitors and did not find the said Sealy mattress to be a better buy at \$39.95.

Therefore the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In referring to or describing its "Posturepedic" mattress as the "no morning backache" mattress or words to that effect respondent in a substantial number of cases has failed to state that reference is made only to backache resulting from the use of a too soft mattress. In other instances where an explanatory marginal note is used it is so far removed from the statement it purports to explain and is so inconspicuous that it does not constitute an adequate disclosure that reference is made only to backache caused from sleeping on a too soft mattress.

PAR. 8. Respondent, by furnishing licensees with advertising material who in turn furnish said advertising material to retailers, has thereby placed in the hands of licensees the means and instrumental-

Decision and Order

63 F.T.C.

ities by and through which they may mislead the public as to the quality, the usual and regular price, or the therapeutic properties of said products and the savings afforded to purchasers thereof.

PAR. 9. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of mattresses, box springs and other bedding products of the same general kind and nature as those sold by respondent.

PAR. 10. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Sealy, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the

State of Delaware with its office and principal place of business located at 666 North Lake Shore Drive, in the City of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Sealy, Incorporated, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of mattresses, box springs, bedding products or any other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly:

(a) That any savings from the usual and customary retail selling price of any of said products are afforded the purchasers thereof where the product offered for sale at a stated reduced price is not the selfsame product as that offered for sale at the higher retail price from which the saving is claimed; or misrepresenting, in any manner, the savings afforded purchasers of respondent's said products.

(b) That the usual and customary retail selling price of any of said products has been reduced where the product offered for sale at the purported reduced price is not the selfsame product as that which had been sold at said higher price.

(c) That any of said products is the selfsame product as any other product or is identical in any respect to any other product unless respondent establishes that such is the fact.

(d) That an independent research firm has evaluated or appraised any Sealy product, that said research firm has compared such product with competitors' products or that the said research firm has determined the Sealy product to be of a higher value or of better quality than competitors' products unless such services were performed by such research firm and such evaluations were actually afforded.

(e) That said products have been specially designed and constructed to afford and do in fact afford correct posture during sleep and are capable of preventing or correcting or of contributing materially to the prevention or correction of posture defects and have been specially designed and

Syllabus

63 F.T.C.

constructed so as to prevent or afford substantial relief with respect to a specific body deformity or deformities and accord with recommendations of orthopedic authorities respecting design and construction for such deformity or deformities, unless respondent establishes that such is the fact.

(f) That the use of their mattresses will relieve or prevent backaches unless it is clearly and conspicuously disclosed in immediate conjunction with such statement or representation that such relief or prevention will be afforded only to users whose backaches result from using a too soft mattress.

2. Using the brand name "Posturepedic" or any terms of similar import or meaning, in conjunction with any other words, expressions or illustrations implying preventive, corrective or curative properties for postural defects or any other body deformities, in connection with respondent's "Posturepedic" mattress or box spring or any mattress or box spring of similar construction and design or any other stock mattress or box spring.

3. Furnishing or otherwise placing in the hands of licensees, retailers or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

THE KIWI POLISH COMPANY, PROPRIETARY, LTD.