

sherbets or water ices, (c) natural or processed cheese, or (d) butter, without the prior approval of the Federal Trade Commission.

IN THE MATTER OF
2361 STATE CORP. ET AL.

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

Docket C-735. Complaint, Apr. 21, 1964—Decision, Apr. 21, 1964

Consent order requiring Chicago manufacturers of mattresses, box springs and other bedding products, to cease representing falsely by attaching to their mattresses labels upon which fictitious and excessive amounts were printed that such amounts did not exceed the highest price at which substantial sales were made in their trade area; and by use of such words on labels as "ORTHOPEDIC" along with a picture of a man in white jacket that the mattresses were specially designed to prevent or correct body deformities and were prescribed by doctors.

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 2361 State Corp., a corporation (formerly known as A. Brandwein & Co.), and Harry J. Brandwein and Sidney L. Brandwein, 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 2361 State Corp. (formerly known as A. Brandwein & Co.) is a corporation organized, existing and doing business under and by virtue of the laws of the state of Illinois, with its principal office and place of business located at 2361 South State Street, Chicago 16, Illinois.

Respondents Harry J. Brandwein and Sidney L. Brandwein are officers of the corporate respondent. They formulate, direct and control the policies, 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, manufacturing, sale and distribution of mattresses, box springs and other bedding products 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 products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in the various other States of the United States, and maintain, and at all times mentioned herein, have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the purchase of their mattresses, have engaged in the practice of attaching, or causing to be attached, to their mattresses labels upon which certain amounts are printed thereby representing, directly or by implication, that said amounts do not appreciably exceed the highest price at which substantial sales of the preticketed article are made in respondents' trade area. In truth and in fact said amounts are fictitious and are appreciably in excess of the highest price at which substantial sales of said preticketed article are made in respondents' trade area.

PAR. 5. Respondents, in the course and conduct of their business, and for the purpose of inducing the sale of their mattresses, have

Complaint

65 F.T.C.

engaged in the practice of attaching or causing to be attached to their mattresses labels which contain statements, representations and depictions of which the following are typical but not all inclusive.

ORTHO-PEDIC

DE LUXE

CITATION

SCIENTIFICALLY CONSTRUCTED

FOR PROPER SUPPORT

[Depiction of a woman reclining on a mattress. Standing to one side is a man in white jacket, ostensibly a Doctor, writing a prescription.]

Created exclusively by

A. BRANDWEIN and CO., CHICAGO, ILL.

Beauty Bracer

ortho-pedic type construction

PAR. 6. By and through the use of the aforesaid statements and representations appearing on labels respondents have represented directly or indirectly:

1. Through the use of the name "Ortho-Pedic" and the statement "orthopedic type construction" alone or in conjunction with the various statements and representations above set forth relating to said mattresses, that said mattresses have been specially designed and constructed so as to prevent, correct or afford substantial relief with respect to a specific body deformity or deformities and accord with recommendations of orthopedic authorities respecting design and construction of mattresses for the prevention, correction or relief of such deformity or deformities.

2. That doctors or the medical profession prescribe the use of mattresses manufactured and sold by respondents.

PAR. 7. In truth and in fact:

1. 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 of mattresses for the prevention, correction or relief of such deformity or deformities. Said mattresses are stock mattresses which are generally available and indiscriminately offered for sale and sold to the consuming public.

2. Doctors or the medical profession do not prescribe the use of mattresses manufactured and sold by respondents.

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

PAR. 8. Respondents, by labeling their mattresses in the manner aforesaid have placed in the hands of retailers and others the means and instrumentalities by and through which they may mislead the public as to the usual and customary retail price of said mattresses, the savings afforded to customers thereof and the therapeutic properties of said mattresses.

PAR. 9. 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. 10. The use by 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.

PAR. 11. 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 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

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

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby

issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, 2361 State Corp., which corporation was formerly known as A. Brandwein & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2361 South State Street, Chicago 16, Illinois.

Respondents Harry J. Brandwein and Sidney L. Brandwein are officers of the corporation and their address is the same as that of the corporation.

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

ORDER

It is ordered, That respondents 2361 State Corp., a corporation (formerly known as A. Brandwein & Co.), and its officers, and Harry J. Brandwein and Sidney L. Brandwein, individually and as officers of said corporation, and respondents' 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 article of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The act or practice of preticketing merchandise at an indicated retail price or otherwise disseminating or advertising a list, suggested or other indicated retail price for respondents' merchandise: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted for violation hereof, for respondents to affirmatively establish that such indicated retail price was disseminated or advertised in good faith and has not appreciably exceeded the highest price at which substantial sales of such article were being made in respondents' trade area.

2. Misrepresenting, directly or indirectly, the retail price at which respondents' merchandise is sold in respondents' trade area or the retail price at which respondents' merchandise is sold in the trade area of any distributor or dealer in respondents' merchandise.

3. Using on labels or in any other manner depictions of doctors or members of the medical profession or representing, directly or indirectly, that members of the medical profession prescribe the use of respondents' mattresses or other bedding products.

4. Using the word orthopedic or any variation thereof or the statement "Ortho-pedic type construction" or any other word,

term or statement of similar import or meaning in reference to or as descriptive of any said products: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted for violation hereof for respondents to establish affirmatively that:

(a) The product involved has been specially designed and constructed so as to prevent, correct or afford substantial relief with respect to a specific body deformity or deformities;

(b) The design and construction of such product accords with recommendations of orthopedic authorities for the prevention, correction or relief of such body deformity or deformities; and

(c) In using said word, term or statement, as aforesaid, it was accompanied by a designation of the kind or kinds of body deformities for which the product involved had been so designed and constructed.

5. Furnishing or otherwise placing in the hands of retailers or dealers of said products the means and instrumentalities by and through which they may mislead or deceive the purchasing public in respect to the things hereinbefore prohibited.

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.