

IN THE MATTER OF
NATIONAL MATTRESS COMPANY ET AL.

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

Docket C-1249. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Huntington, West Va., mattress and bedding manufacturer and its seven wholly owned subsidiaries, to cease misrepresenting that its products have any health or therapeutic benefits, that they are built to specifications promulgated by any health organization or are approved by any such organization.

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 National Mattress Company, Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company, corporations, and James F. Edwards, Carter W. Wild and Ernest C. Ghrist, individually and as officers and directors of said corporations, 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 National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal

office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Jasper National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 12120 Russellville Road in the city of Jasper, State of Alabama.

Respondent Cincinnati National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 501 East Pearl Street in the city of Cincinnati, State of Ohio.

Respondent Huntington National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Saginaw National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 1510 Holland Avenue in the city of Saginaw, State of Michigan.

Respondent Tyler National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 620 Hillcrest Drive in the city of Tyler, State of Texas.

Respondent Charlotte National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at 2112 Thrift Road in the city of Charlotte, State of North Carolina.

Respondent Youngstown National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Tod and West Avenues in the city of Youngstown, State of Ohio.

Individual respondents James F. Edwards, Carter W. Wild and Ernest C. Ghrist are officers and directors of said corporate respondents and control, direct and formulate the acts, practices and policies of said corporate respondents, including the acts and practices herein set forth. Their business addresses are the same as that of corporate respondent National Mattress Company.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of mattresses, box springs and other bedding products to retailers for resale to members of the purchasing public.

Respondent National Mattress Company wholly owns eight subsidiary corporations engaged in the aforesaid business activities, including respondents Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company.

Respondents use the registered mark "Posture Queen" on certain of their mattresses and box springs and as a trade name in the promotion of the sale of said products. Respondent National Mattress Company prepares all advertising and designs all labels bearing said trademark and trade name.

For the purpose of promoting the sale of said mattresses and box springs, respondents have contracted with twelve statewide associations of practitioners of chiropractic and the interstate association of which said statewide associations are members. By terms of the contracts, the contracting mattress companies are permitted to represent their aforesaid "Posture Queen" mattresses and box springs as endorsed by said associations under specified conditions, in consideration of which each of said associations receives a payment for each sale of a mattress or box spring so represented which is attributable to its contract. Respondent Jasper National Mattress Company is a party to a number of said contracts and has been instrumental in promoting sales of said mattresses and box springs under the terms of said contracts.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time past have caused, their products, when sold, to be shipped to purchasers thereof located in States other than the State or States in which said products were made at respondents' several production facilities 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. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their mattresses and box springs, the respondents have made, and are now making,

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numerous statements in advertisements inserted in newspapers, in promotional materials and on labels, with respect to the health properties, design, construction, endorsement and approval of their mattresses and box springs:

Typical and illustrative of the aforesaid statements and representations, but not all-inclusive thereof, are the following:

(1) Scientifically Built For Proper Sleeping Posture!

Posture Queen Mattress and Box Spring

The only Mattress and Box

Spring built to Chiropractic

Specifications of Your *

State Chiropractic Asso.

Ask Your

Chiropractor

How "Posture Queen"

Can Help You!

A National Product

* * * * *

*Here appears, in some advertisements, the name of the state in which the representation is published.

(2) IT'S COMPLETELY NEW!

BY Namaco 60 Years of Fine Mattresses

Posture Queen DELUXE

Mattress and Box Spring

The only Mattress and Box

Spring built to Chiropractic

Specifications of Your

State CHIROPRACTIC Asso.

Ask Your

Chiropractor

How "Posture Queen"

Can Help You!

A National Product

* * * * *

It's quilted (The New Way) Foam Insulation

Each Side . Crush Proof Edge Supported . Built

to Chiropractic Specifications by Expert

Craftsmen . Luxury-Beauty-Chiropractic Support

3) Posture Queen

A CHIROPRACTIC POSTURE MATTRESS

Helps maintain Spinal Alignment

For use as an aid in the management

of general

Back conditions when purchased with

matching Foundation

[*] Manufactured under Attested Specifications by

NAMACO

60 years of fine mattresses

* Here appears a representation of the human spinal column

PAR. 5. By and through the use of the above-quoted statements and representations and others of similar import and meaning, but not specifically set out herein, the respondents have represented, and are representing, directly or by implication, that:

1) Said mattress and box springs have been specially designed and constructed so as to prevent, correct or afford relief with respect to a body deformity or deformities.

2) Respondents' mattresses and box springs have been designed and constructed in accordance with mattress and box spring design and construction standards and specifications established by an association of chiropractic practitioners, which standards and specifications consist of specific engineering characteristics.

3) The association referred to has established mattress and box spring design and construction standards known to or readily available to those competitors of respondents whose mattresses and box springs are sold in the area of said organization's existence.

4) Said standards are a measure of quality for mattresses and box springs of a grade similar to those so described by respondents.

5) Respondents' mattresses and box springs so described by respondents as having been designed and constructed in accordance with said standards have in fact been so designed, while said competitors either manufacture their said mattresses and box springs in disregard of said standards or are unable to manufacture their said mattresses and box springs in compliance with said standards.

6) Authority to describe respondents' mattresses and box springs as approved or endorsed by the referred to associations has been given without remuneration or other consideration, directly or indirectly, from respondents to said associations.

PAR. 6. In truth and in fact:

1) Respondents' mattresses and box springs have not been specially designed or constructed so as to, nor will they in fact, prevent, correct or afford relief with respect to a body deformity or deformities.

2) Respondents' mattresses and box springs have not been designed or constructed in accordance with mattress and box spring design or construction standards and specifications established by an association of chiropractic practitioners, which standards and specifications consist of specific engineering characteristics.

3) The associations referred to in respondents' representations have established no mattress or box spring design or construction

standards and specifications known to or readily available to those competitors of respondents whose products are sold in the area of existence of said associations.

4) Said standards are nonexistent, and are not, therefore, a measure of quality for mattresses or box springs of a grade similar to those described by respondents by reference to said standards.

5) Respondents' mattresses and box springs have not met any such standards, which are nonexistent, and said competitors of respondents do not manufacture their mattresses and box springs in disregard of nor are they unable to meet said nonexistent standards.

6) Authority of respondents to refer to the chiropractic associations to which they do refer, directly or by implication, in describing their mattresses and box springs is not given without remuneration from respondents to said associations. Said associations, by terms of contracts with respondents, receive financial benefit from the sale of each mattress or box spring so referred to.

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

PAR. 7. 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 and box springs and other bedding products of the same general kind and nature as those sold by respondents.

PAR. 8. 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 belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. 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 National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Jasper National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at 12120 Russellville Road in the city of Jasper, State of Alabama.

Respondent Cincinnati National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 501 East Pearl Street in the city of Cincinnati, State of Ohio.

Respondent Huntington National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 21st Street and Second Avenue in the city of Huntington, State of West Virginia.

Respondent Saginaw National Mattress Company is a corpora-

tion organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 1510 Holland Avenue in the city of Saginaw, State of Michigan.

Respondent Tyler National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 620 Hillcrest Drive in the city of Tyler, State of Texas.

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Respondent Youngstown National Mattress Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at Tod and West Avenues in the city of Youngstown, State of Ohio.

Respondents James F. Edwards, Carter W. Wild and Ernest C. Ghrist are officers and directors of said corporations and their address is the same as that of respondent National Mattress Company.

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 National Mattress Company, Jasper National Mattress Company, Cincinnati National Mattress Company, Huntington National Mattress Company, Saginaw National Mattress Company, Tyler National Mattress Company, Charlotte National Mattress Company and Youngstown National Mattress Company, corporations, and their officers, and James F. Edwards, Carter W. Wild and Ernest C. Ghrist, individually and as officers and directors of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the manufacturing, advertising, 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. Representing, directly or by implication, that any stock mattress or box spring has been specially designed or constructed so as to, or will in fact, prevent, correct or afford relief with respect to a body deformity or deformities.

2. Misrepresenting, in any manner, the therapeutic properties or health benefits of any of respondents' said products.

3. Representing, directly or by implication, that any of respondents' mattresses or box springs are designed or constructed in accordance with specifications or standards established by any organization unless the organization so referred to has prescribed the number of coils, composition and gauge of wire, tensile strength, flexibility and other similarly specific engineering characteristics for said mattresses or box springs and respondents' mattresses and box springs so described have in fact been designed and constructed in accordance therewith.

4. Representing, directly or by implication, that any association of practitioners of the healing arts has established mattress or box spring design or construction standards or specifications known to or readily available to those competitors of respondents whose mattresses and box springs are sold in the area of said association's existence.

5. Representing, directly or by implication, that any non-existent standards or specifications, or any standards or specifications which do not describe and establish with detail and particularity the design, construction, quality and performance of mattresses and box springs are a measure of quality for mattresses or box springs.

6. Representing, directly or by implication, that respondents' mattresses or box springs have been designed or constructed in accordance with any nonexistent standards or specifications, or in accordance with any standards or specifications which do not prescribe and establish with detail and particularity the design, construction, quality and performance of mattresses and box springs, or that the products of others do not meet said standards or specifications.

7. Representing, directly or by implication, that any of respondents' products have been approved or endorsed by any member, members or association of members of the healing arts, without clearly and conspicuously revealing the fact of any remuneration or other consideration given, directly or in-

directly, by respondents to said member, members or association for said approval or endorsement.

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.
