
IN THE MATTER OF
MATTRESSES, INC., ET AL.

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

Docket C-1574. Complaint, Aug. 6, 1969—Decision, Aug. 6, 1969

Consent order requiring a Baltimore, Md., retailer of mattresses and box springs to cease using fictitious pricing, bait offers, and false health claims, misrepresenting that its products are patented, and failing to disclose all financial details of its sales contracts.

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 Mattresses, Inc., a corporation, and Paul Feldman, individually and as an officer 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 Mattresses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business formerly located at 4030 W. Garrison Avenue in the city of Baltimore, Maryland, and with present address of 6813 Huntington Drive, Baltimore, Maryland.

Respondent Paul Feldman is an individual and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent. His residence address is 8606 Bramble Lane in Randallstown, Maryland.

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 and box springs to the public.

PAR. 3. In the course and conduct of their business, the respondents for some time last past have caused their said products, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in the District of Columbia and the State of Virginia, and 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 business as aforesaid and for the purpose of inducing the purchase of said mattresses and box springs, respondents have represented, directly or by implication, the following:

1. That they are working in conjunction with a Physical Fitness and Health Program.
2. That their "health representatives" will call on prospective customers and demonstrate respondents' "new health mattress."

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3. That they are making a bona fide offer to sell mattresses at a reduced or special sale price of \$22.50 for a limited time only and that purchasers of such mattresses realize a savings from respondents' regular selling price.

4. Through the use of the words or terms "orthopedic," "health," "orthopedic type," "health mattress," and other words or terms of similar import not set forth herein, that certain of respondents' mattresses and box springs have been specially designed and constructed so as to prevent, correct or afford substantial relief to a body deformity or deformities, and accord with recommendations of orthopedic authorities respecting design and construction of such products for the prevention, correction or relief of such deformity or deformities.

5. Through the use of the words or terms "custom," "custom made," "custom built," and other words or terms of similar import that respondents' mattresses and box springs have been specially designed and constructed in accordance with specifications furnished by individual purchasers or users prior to manufacture of said mattresses and box springs.

6. That with respect to the prices of the "Golden Lyne" mattresses and box springs, these products are being offered for sale or sold at a special, reduced, or discount price and that savings are thereby afforded purchasers from respondents' regular selling prices.

7. Through the use of an advertisement appearing in the Maryland State Medical Journal, the official publication of the Medical and Chirurgical Faculty of the State of Maryland, that the design and construction of respondents' "Golden Lyne" bedding have been approved by said Faculty and by reason thereof have preventive or therapeutic properties.

8. By and through the use of the words "Protected By United States Patent No. 2,227,685," that their bedding products are protected by a patent issued to them by the United States Patent Office, or the respondents are authorized to use such patent number which was issued to another party.

PAR. 5. In truth and in fact:

1. Respondents are not working in conjunction with any physical fitness and health programs and are only in the business of advertising, selling, and distributing bedding products.

2. Respondents do not employ any "health representatives" but employ salesmen, who are not qualified to be referred to as

"health representatives," who call on customers and demonstrate a mattress which has no therapeutic or preventive properties and should not be referred to as a "health mattress."

3. Respondents' offers are not bona fide offers to sell the said "health mattress" at the aforesaid price, but are made for the purpose of obtaining leads to persons interested in the purchase of mattresses and box springs. After obtaining such leads, respondents' salesmen or representatives call upon such persons at their homes and disparage the aforementioned mattress and otherwise discourage the purchase thereof and attempt to sell, and frequently do sell, different and more expensive mattresses and box springs. The offer set forth above, is not for a limited time only, and said mattresses are offered regularly at the represented price.

4. Respondents' mattresses and box springs have not been specially designed and constructed so as to prevent, correct or afford substantial relief to body deformity or deformities nor do said mattresses accord with recommendations or orthopedic authorities respecting design and construction for prevention, correction or relief of such deformities.

5. Certain of the mattresses represented by respondents as being custom made are not specially designed in accordance with specifications furnished prior to manufacture by individual purchasers or users of their mattresses or box springs.

6. Respondents' "Golden Lyne" bedding products are not being offered for sale at special or reduced prices and no savings are realized by respondents' customers.

7. No Medical and Chirurgical Faculty or any chiropractic association or society has approved the design or construction of any of respondents' bedding products, nor has such design or construction been approved by any practitioner of medicine, orthopedics or chiropractic.

8. None of the respondents' bedding products, nor any material part thereof, are protected by a United States patent issued to the respondents, nor are the respondents authorized or licensed by the owners of United States Patent No. 2,227,685 to use such patent number, which has since expired.

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

PAR. 6. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of said mattresses and box springs, respondents (A) have had customers execute

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conditional sales contracts and other negotiable instruments in blank and (B) have failed to disclose orally and in writing at the time of sale, all of the terms and conditions of the negotiable instrument to be signed, including but not limited to, the finance charge, rate of interest, and insurance charge.

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, box springs and other bedding products of the same general kind and nature as those sold by the 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 and mistaken 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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mattresses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business formerly located at 4030 West Garrison Avenue, in the city of Baltimore, Maryland, and with present address of 6813 Huntington Drive, Baltimore, Maryland.

Respondent Paul Feldman is an officer of said corporation and his business address is the same as that of said corporation. His residence address is 8606 Bramble Lane in Randallstown, Maryland.

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 Mattresses, Inc., a corporation, and its officers, and Paul Feldman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of mattresses, box springs, or any other product 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 the respondents or their representatives are affiliated with or are working in conjunction with a physical fitness or health program, or that the respondents or their representatives are "health representatives," or representing in any manner that respondents or their representatives, agents, or employees are contacting members of the public for any purpose other than the sale of merchandise.

2. Using, in any manner, a sales plan, scheme, or device wherein, false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

3. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but is to obtain leads or prospects for the sale of other merchandise at higher prices.

4. Discouraging the purchase of, or disparaging, any merchandise which is advertised or offered for sale.

5. Representing, directly or by implication, that any merchandise is offered for sale when such offer is not a bona fide offer to sell said merchandise.

6. Representing, directly or by implication, that any article of merchandise is offered for sale or sold at a special price, reduced price, or a discount price unless such price constitutes a significant reduction from the respondents' established selling price at which such merchandise has been sold in substantial quantities by respondents in the recent regular course of their business.

7. Representing, directly or by implication, that any article of merchandise offered for sale is limited in time or in any other manner unless any represented limitation or restriction is actually imposed and in good faith adhered to.

8. Misrepresenting, directly or indirectly, in any manner the savings realized by purchasers of respondents' merchandise.

9. Using the words or terms "orthopedic," "health," or any other words or terms of similar import or meaning as descriptive of mattresses or any other bedding product not specially designed and constructed so as to prevent, correct, or afford substantial relief to a body deformity or deformities, and not in accord with recommendations of an orthopedic authority or authorities respecting the design or construction of such product for the prevention, correction, or relief of a body deformity or deformities.

10. Representing, directly or by implication, that the design or construction of their products has been approved by a practitioner or practitioners of medicine, orthopedics or chiropractic.

11. Using the word "custom" or the phrases "custom made," "cusom built," or any other words or phrases of simi-

lar import or meaning as descriptive of stock merchandise; or misrepresenting, directly or by implication, that their bedding products have been specially designed and constructed in accordance with specifications furnished by the purchasers or users prior to manufacture.

12. Representing, directly or by implication, that bedding products, or any material part thereof, are protected by United States Patent Number 2,227,685, or falsely representing, in any manner, that bedding products, or any material part thereof, are protected by a United States patent or that the respondents are authorized to use a patent issued to another party.

13. Failing to disclose orally at the time of sale and in writing to each customer who executes a conditional sales contract, promissory note, or other negotiable instrument, with such conspicuousness and clarity as is likely to be read and observed by the customer all of the following items:

- (a) The cash price of the merchandise purchased.
- (b) The sum of any amounts credited as downpayment (including any trade-in).
- (c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).
- (d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.
- (e) The amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).
- (f) The amount of the finance charge.
- (g) The finance charge expressed as an annual percentage rate.
- (h) The total credit price (the sum of the amounts described in paragraph (e) plus the amount described in paragraph (f)) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.
- (i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

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(j) A description of any security interest held or to be retained or acquired by respondent in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

For the purpose of this paragraph, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under Sections 106 and 107 of Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

14. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' merchandise, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said 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.
