

IN THE MATTER OF
R. H. MACY & CO., INC.

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

Docket C-1970. Complaint, July 12, 1971—Decision, July 12, 1971

Consent order requiring a New York City department store with branches in other States to cease representing that its mattress pads, covers and pillow cases are flame retardant unless all exposed parts of such articles are treated with a retardant finish.

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 R. H. Macy & Co., Inc., a corporation, sometimes 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 R. H. Macy & Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 151 West 34th Street, New York, New York.

Respondent operates a department store at Herald Square in New

York City, under the name of Macy's New York, with eleven branch stores in the State of New York and one branch store in the State of Connecticut and department stores in other States known as Bamberger's in Newark, New Jersey, Davison-Paxon's in Atlanta, Georgia, LaSalle & Koch in Toledo, Ohio, Macy's California in San Francisco and Macy's Missouri-Kansas in Kansas City along with branches thereof.

PAR. 2. Respondent in the course and conduct of its business has been, and is now, engaged in the sale, advertising and offering for sale in commerce of merchandise it ships or causes to be shipped, when sold, from the State of New York to purchasers located in various other States and maintains and has maintained a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent's volume of business in the retail sale of general merchandise is and has been substantial. Among such merchandise so sold and shipped are mattress pads.

PAR. 3. Respondent is now, and at all times mentioned herein, has been in substantial competition in commerce with other corporations, firms and individuals engaged in the sale and distribution of mattress pads.

PAR. 4. In the course and conduct of its business in commerce, and for the purpose of inducing the purchase of said mattress pads, respondent has made representations with respect to the flame retardant characteristics of said product.

Statements and representations in certain of said advertising include, but are not limited to, the following:

* * * no burn flame-retardant mattress pads filled with bonded Dacron 88 polyester.

FLAME-RETARDANT MACHINE-WASHABLE MATTRESS PADS * * * .

Protect your bedding with new flame-retardant cotton-covered mattress pads. Tops and skirt (in fitted styles) are treated to resist flare, flame, smolder * * * .

Said advertising material did not clearly and conspicuously disclose that only the top and skirt portions of said mattress pads had been treated with the flame retardant finish.

PAR. 5. Through the use of the aforesaid representations and others of similar import and meaning, but not specifically set out herein, respondent has represented, directly or by implication, that the said mattress pads are completely flame retardant and thus provide a degree of safety and protection when in fact the only portions which have been treated with the flame retardant finish have been the top and skirt portions thereof.

PAR. 6. Said product consists of a dacron polyester filling inserted between two identical layers of an all cotton quilted fabric with a skirt attached thereto by means of a binding sewn around the edges. By virtue of its construction and appearance, in the course of normal use, it may be reversed and expose that portion of the mattress pad which has not been treated with the flame retardant finish. Thus, said representations may mislead prospective purchasers of said mattress pads as to the extent of protection afforded.

PAR. 7. The use by respondent of the foregoing false, misleading and deceptive representations set forth in Paragraph Four above has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of said product under the erroneous and mistaken belief that such statements and representations are true.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all 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 respondent 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34 (b) of its Rules, the Commission hereby issues its

complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent R. H. Macy & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 151 West 34th Street, New York, New York.
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, R. H. Macy & Co., Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattress covers, mattress pads, sheets and pillow cases, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that said products are flame retardant, or have been treated with a flame retardant finish, and from utilizing any words or depictions of similar import or meaning in connection therewith, unless all uncovered or exposed parts (except sewing threads) will retard and resist flame, flare and smouldering, or have been treated with a finish which will retard and resist flame, flare and smouldering.

It is further ordered, That in all instances where respondent represents said products to be flame retardant or treated with a flame retardant finish, warnings be provided in or on the packaging in immediate conjunction with said representations and in type or lettering of equal size and conspicuousness, and on a label affixed to the said products securely and with sufficient permanency to remain in a conspicuous, clear and plainly legible condition, of any danger from flammability which may result if these products be dry cleaned or washed by other than the recommended means or in excess of a stated number of times.

It is further ordered, That respondent make every reasonable effort to immediately notify in writing all of its customers who have purchased or to whom have been delivered the mattress pads which gave rise to this complaint to alert them to the fact that only the top and skirt portions have been treated with the flame retardant finish.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed changes in the corporate re-

spondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all personnel of respondent responsible for the preparation, creation, production or publication of advertising, packaging or labeling of all products covered by this order.

It is further ordered, That 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 of its compliance with this order.

IN THE MATTER OF

BARCLAY HOME PRODUCTS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF