

Complaint

79 F.T.C.

IN THE MATTER OF

MONTGOMERY WARD & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1973. Complaint, July 12, 1971—Decision, July 12, 1971*

Consent order requiring the third largest retail merchandiser in the country with headquarters in Chicago, Ill., to cease representing that its mattress pads, sheets and pillow cases are flame retardant unless all exposed parts of such articles have been 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 Montgomery Ward & 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 Montgomery Ward & Co., Inc., 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 at 619 West Chicago Avenue, Chicago, Illinois.

Respondent is the third largest retail merchandiser in the country. It operates approximately 475 retail stores, 590 catalog stores and 698 catalog agencies throughout the United States. Its New York buying office is located at 393 Seventh Avenue, New York, New York. Nine warehouses are operated in the States of New York, Maryland, Texas, California, Minnesota, Illinois, Colorado, Missouri and Oregon. Twice a year, respondent publishes a mail order catalog, each issue of which has a circulation of over six million copies which are mailed to customers throughout the United States.

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 and other states to purchasers located throughout the country 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 in advertisements, in its mail order catalog circulated throughout the United States, in packaging, as well as in other advertising material with respect to the flame retardant characteristics of said product.

Typical and illustrative of the statements and representations in said advertising and packaging, are the following:

This mattress pad could actually SAVE YOUR LIFE!

FIRE IN THE NIGHT! Thousands each year, even in the best-run homes. Costly destruction from heat, water, suffocating smoke. That's why cotton top is FLAME RETARDANT TREATED.

Resists flare!

Resists flame!

Resists smouldering!

Even lighted matches can burn themselves out.

Fill is polyester, which by its very nature is also flame retardant.

FLAME RETARDANT FITTED MATTRESS PAD AND COVER

PAR. 5. That said advertisements which appeared in two successive Montgomery Ward mail order catalogs contained a photograph of a man reclining in bed on a mattress pad while reading a book and smoking a cigarette. A smoked cigarette is shown in an ash tray at his side on the bed. The advertisement also contains a drawing of a lighted match which is either just about to drop, or has dropped, on the mattress pad. The same match is then shown with its flame extinguished after coming in contact with the mattress pad. A slight charring of the mattress pad, less than the length of the match, is shown in the drawing. The headline above said photograph states as follows:

This mattress pad could actually SAVE YOUR LIFE!

PAR. 6. That 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, and that

the bottom and dacron polyester filling had not been treated so as to provide a flame retardant finish.

PAR. 7. That 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.

That said product, by virtue of its construction and appearance, in the course of normal use, may be reversed thus exposing that portion of the mattress pad which had not been treated with the flame retardant finish.

PAR. 8. Through the use of the aforesaid representations and depictions, and others of similar import and meaning, but not specifically set out herein, and by virtue of the construction and appearance of said mattress pads, respondent represents and 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. 9. In truth and in fact, said representations mislead prospective purchasers into the mistaken belief that the mattress pads are completely flame retardant, and further mislead prospective purchasers as to the degree of safety and protection afforded in preventing injury caused by or resulting from flame, flare or smouldering.

PAR. 10. The use by respondent of the foregoing false, misleading and deceptive representations and depictions set forth 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. 11. 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 Montgomery Ward & Co., Inc., 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 619 West Chicago Avenue, Chicago, 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, Montgomery Ward & 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, that 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 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 change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change 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

R. L. DRAKE COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(a) OF THE CLAYTON ACT

Docket C-1974. Complaint, July 12, 1971—Decision, July 12, 1971

Consent order requiring a Miamisburg, Ohio, manufacturer and seller of amateur radio equipment to cease discriminating in the price of such products in violation of Section 2(a) of the Clayton Act by selling to any purchaser at net prices higher than the net prices charged any competing purchaser.