

to cease and desist to all personnel of respondents 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 in which they have complied with this order.

IN THE MATTER OF
GIMBEL BROTHERS, INC.

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

Docket C-2193. Complaint, Apr. 14, 1972—Decision, Apr. 14, 1972

Consent order requiring a New York City department store and its six branch stores selling mattress pads, mattress covers, sheets and pillow cases to cease misrepresenting its products as flame retardant without also attaching to its products labels stating the number of washings or dry cleanings the flame retardant will withstand.

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 Gimbel Brothers, 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 Gimbel Brothers, 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 33rd Street and Broadway, New York, New York.

Respondent is one of the leading department stores in the nation and operates its main store at 33rd Street and Broadway in New York City under the name Gimbel's New York with six branch stores located in New York State, two in Connecticut and one in New Jersey, and department stores in other states known as Gimbels Milwaukee, Gimbels Philadelphia and Gimbels Pittsburgh, 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 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 newspaper advertisements and in a direct mailing piece having wide circulation, 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:

**WHITE SALE SAVINGS NOW ON FIREGUARD FLAME RETARDANT
MATTRESS PAD AND COVER BY ACME**

Flame retardant fabric on BOTH sides. Complete protection won't wash out.

* * * nylon tricot skirt. Flame resistant.

Fitted style * * * Protects mattress * * *

100% virgin polyester fiberfill. Flame retardant

**PLUMP FIREGUARD MATTRESS PADS HAVE FLAME-RETARDANT FOR
EXTRA-PROTECTION**

White cotton Acme pads filled with polyester have flame-retardant fabric finish that lasts through countless washings

**EXTRA PROTECTION-FIREGUARD FLAME RETARDANT POLYESTER-
FILL MATTRESS PADS**

Plump, no-iron white cotton pads filled with non-allergenic polyester have a flame retardant that won't wash away.

**FOR PLUS PROTECTION-FIREGUARD FLAME RETARDANT MAT-
TRESS PADS** * * * flame-retardant finish that won't wash away.

**FLAME RETARDANT PADS—FEEL SECURE WITH FIREGUARD NO-
IRON MATTRESS PADS**

Get the exceptional comfort of Acme's new bedding covers of no-iron white cotton, filled with fluffy white, non-allergenic polyester—plus the lasting protection of flame retardant treatment. Fitted styles have easy-on nylon tricot skirt

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PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and meaning, published in advertisements prepared by Gimbel Brothers, Inc., representations have been made directly or by implication that:

- a) The mattress pad contained a flame retardant finish which would not wash out under any conditions of laundering.
- b) That the entire mattress pad had been treated with a flame retardant chemical which offered complete protection against flames.
- c) That the fitted style containing the nylon tricot skirt was flame resistant and offered protection against flames.
- d) That the virgin polyester filler had been treated with a flame retardant chemical which offered protection against flames.
- e) That the treated pads provide security and complete protection against hazards caused by flames.

PAR. 6. In truth and in fact:

- a) The flame retardant finish on respondent's mattress pads will wash out under certain laundering conditions.
- b) The entire mattress pad had not been treated with a flame retardant chemical and did not offer complete protection against flames.
- c) The fitted style, containing a nylon tricot skirt, does not resist flames and offers no protection to the mattress against lighted cigarettes or other flames which are able to burn right through and into the mattress.

d) The virgin polyester filler is not flame retardant, and does not offer protection against flames.

e) The pads do not provide security and complete protection against the hazards caused by flames.

PAR. 7. 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 flame retardant mattress pads offered consumers complete protection which could not be washed away under any and all conditions of laundering, and that said mattress pads are entirely flame retardant and thus provide complete safety and protection against flames.

PAR. 8. The use by respondent of the aforesaid 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.

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PAR. 9. Respondent furthermore has failed to reveal in its advertising, packaging and labeling of said product, material and relevant facts related to the proper laundering of said product in order to preserve the flame retardant finish. Respondent has failed to provide warnings to prospective purchasers and to purchasers of said product against the use of chlorine bleach, soap and acid-sours used in commercial laundries which negates the flame retardant finish under certain conditions.

That the failure to disclose said material facts leads the consumer to believe that the representations being made are true and complete. Such failure to disclose material facts is unfair, and false, misleading and deceptive, and constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act.

PAR. 10. 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.

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The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the New York Regional office 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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has 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

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procedure prescribed in Section 2.34 (b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gimbel Brothers, 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 33rd Street and Broadway, 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, Gimbel Brothers, Inc., a corporation, its subsidiary and affiliated corporations, its successors and assigns, its officers, 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 that said products are flame retardant, or have been treated with a flame retardant finish, unless all uncovered or exposed parts (except sewing threads), as well as any other parts represented directly or by implication to be flame retardant or as treated with a flame retardant finish, 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.

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It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed changes 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 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 the 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 in which it has complied with this order.