

ECLIPSE SLEEP PRODUCTS, INC., ET AL.

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

Docket C-2248. Complaint, July 19, 1972—Decision, July 19, 1972.

Consent order requiring manufacturers, in Brooklyn, New York, and Minneapolis, Minnesota, of mattresses, box springs, and other bedding products to cease, among other things, using the word "chiropractic" or misrepresenting the health or therapeutic properties of their product; representing that any

Complaint

of respondent's products have been approved or endorsed by any member or association of the healing arts unless such representation is true; furnishing means or instrumentalities to retailers by which the public may be deceived. Respondents are further required to institute a program of surveillance to determine that their licensees conform to the requirements of the order.

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 Eclipse Sleep Products, Inc., and the Land-O-Nod Company, 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 Eclipse Sleep Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 36 Milford Street, Brooklyn, New York.

Respondent the Land-O-Nod Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 945 Broadway Street, Minneapolis, Minnesota.

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 under the brand name "Springwall Chiropractic."

Respondent Eclipse Sleep Products, Inc., wholly owns three subsidiary corporations engaged in the aforesaid business activities, to wit: Eclipse Sleep Products of New England, Incorporated; Eclipse Sleep Products of Ohio, Incorporated; and Eclipse Sleep Products of Maryland, Incorporated. In addition, respondent Eclipse Sleep Products, Inc., licenses manufacturers of bedding products manufacture and sell mattresses and box springs under the name "Springwall Chiropractic."

Respondent the Land-O-Nod Company owns the registered trademark "Chiropractic" and by virtue of an agreement entered into with Eclipse Sleep Products, Inc., grants the latter, its subsidiaries and licensees the right to use said trademark in conjunction with the man-

ufacture and sale of its bedding units. In return Eclipse Sleep Products, Inc. and its licensees pay an annual royalty to the Land-O-Nod Company.

To promote the sale of "Springwall Chiropractic" mattresses and box springs respondents have entered into an agreement with American Chiropractic Association whereby respondents are permitted to represent that their "Chiropractic" mattresses and box springs are endorsed by said Association and that their bedding products are constructed in accordance with the specifications of the association's posture committee. In return for this endorsement, the association receives a specified amount for each of the named mattresses or box springs sold.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped to purchasers thereof located in states other than the states in which the shipments originated, 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 used, and are now using, the brand name "Chiropractic" in advertisements inserted in newspapers, in promotional materials and on labels.

Further, the respondents have made, and are now making, in the aforesaid promotional materials, statements with respect to the endorsement and approval of their bedding products by the American Chiropractic Association and that their bedding products are constructed in accordance with the specifications of the posture committee of the American Chiropractic Association.

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

(1) WHY SHOULD THIS BEDDING CARRY THE 'CHIROPRACTIC'. This bedding ensemble is constructed and built to the specifications of the Posture Committee of the American Chiropractic Association, and subject to durability and comfort tests by leading Chiropractors.

The Chiropractic mattress has been designed to assist those people who want better posture support during their sleeping hours.

(2) YOU ONLY HAVE ONE BODY TREAT IT KINDLY. The Springwall Chiropractic mattress and box spring * * * the only matched set of bedding constructed in accordance with specifications of the Posture Committee of the AMERICAN CHIROPRACTIC ASSOCIATION to help maintain correct sleep Posture.

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, respondents have represented and have placed in the hands of licensees and others the means and instrumentalities of representing, directly or indirectly:

(1) Through the use of the word "Chiropractic" in conjunction with the various statements above set forth relating to said mattresses and box springs that they have been specially designed and constructed to assure and do, in fact, assure correct posture during sleep to all users under all conditions, or that they afford special health benefits to all users.

(2) The American Chiropractic Association has endorsed "Springwall Chiropractic" mattresses and box springs without receiving any remuneration therefor from respondents.

PAR. 6. In truth and in fact:

(1) Respondents' mattresses and box springs have not been specially designed and constructed to assure and do not, in fact, assure to all users under all conditions correct posture during sleep nor do they afford other special health benefits.

(2) The American Chiropractic Association has not endorsed "Springwall Chiropractic" mattresses and box springs without receiving remuneration therefor from respondents. The association receives payment for each of said mattresses and box springs sold as set forth in Paragraph Two hereof.

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

PAR. 7. Respondents by furnishing licensees, retailers and others with advertising material, have thereby placed in the hands of licensees, retailers and others the means and instrumentalities by and through which they may mislead the public as to the capability of such mattresses and box springs to assure correct sleep posture or afford other health benefits.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, 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. 9. 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 belief.

PAR. 10. 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of such determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, 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 considered the agreement and having provisionally 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Eclipse Sleep Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 36 Milford Street, Brooklyn, New York.

Respondent the Land-O-Nod Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at 945 N.E. Broadway Street, Minneapolis, Minnesota.

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 Eclipse Sleep Products, Inc., and the Land-O-Nod Company, corporations, and their officers, and respondents' agents, representatives, employees and licensees, directly or through any corporate or other device, in connection with the licensing, 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. Using the word "Chiropractic" or any other term, word, or statement of similar import or meaning in conjunction with any other word, expressions or illustrations implying that respondents' mattresses and box springs have been specially designed and constructed to assure and do, in fact, assure correct posture during sleep to all users under all conditions or that they afford special health benefits to all users under all conditions unless said mattresses and box springs have been so designed and constructed and do assure correct posture during sleep or do afford special health benefits as represented; or misrepresenting in any manner the health or therapeutic properties of any of respondents' mattresses and box springs.

2. Representing, directly or by implication, that any of respondents' mattresses and box springs have been approved or endorsed by any member or association of members of the healing arts without clearly and conspicuously disclosing, if such is the fact, that respondents are paying for such approval or endorsement; *Provided, however,* That nothing herein shall prohibit respondents from representing or stating how or for what purpose such payments are used by the recipients thereof.

3. Furnishing or otherwise placing in the hands of licensees or retailers, the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions, subsidiaries, and licensees.

It is further ordered, That:

- (a) The respondents deliver, by registered mail, a copy of this decision and order to each of their present and future licensees in the merchandise covered by this order;

- (b) The respondents provide each such licensee with a returnable form clearly stating his intention to conform his business practices to the requirements of this order;

(c) The respondents inform the licensee that the respondents are obligated by this order to discontinue dealing with those licensees who misuse the promotional material or who commit on their own the deceptive acts or practices alleged to have been engaged in by respondents and such licensees;

(d) The respondents institute a program of continuing surveillance adequate to inform themselves whether the business operations of each of their licensees in the merchandise covered by this order conform to the requirements of this order; and

(e) The respondents discontinue dealing with those licensees who are revealed by the aforesaid program of surveillance to misuse their promotional material or continue on their own the deceptive acts or practices referred to in Paragraphs 1, 2, and 3 of this order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, 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 this 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.

IN THE MATTER OF

MISS MAYFAIR CASUALS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS