

tion 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 shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

---

IN THE MATTER OF

J. C. PENNEY COMPANY, INC.

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

*Docket C-2350. Complaint, Feb. 2, 1973—Decision, Feb. 2, 1973.*

Consent order requiring the nation's second largest retailing organization located in New York City, among other things to cease representing that certain of their merchandise, including mattress pads and covers, sheets, pillow cases and protectors, are flame retardant or have been treated with a flame 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 J. C. Penney Company, 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 J. C. Penney Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business at 1301 Avenue of the Americas, New York, New York.

Respondent is the second largest retailing organization in the nation and operates approximately 1,700 retail stores throughout 49 states and Puerto Rico. It also offers merchandise for sale through mail order catalogs and catalog desks. The circulation

## Complaint

82 F.T.C.

of respondent's mail order catalog is several million copies per issue, is published at least two times a year, and is 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 States of Georgia and Wisconsin 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 and other products.

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 and in packaging and labeling 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:

FLAME RETARDANT FITTED MATTRESS PAD AND COVER  
THE COTTON FABRIC AND THE FOAM BACK WILL NOT SUPPORT FLAMES

Resists flare!

Resists flame!

Both the cotton top and foam backing are treated for total fire retardancy.

Give yourself and your family the added protection of this flame retardant mattress pad.

THE FLAME RETARDANCY LASTS FOR THE LIFE OF THE PAD  
A Penn Prest Flame-Retardant Mattress Pad. Cotton top and foam back are both fire retardant and will not support flame. Stays flame retardant for the life of the product. Diamond stitching binds polyurathane foam back to smooth white cotton top.

THE FLAME RETARDANCY LASTS FOR A MINIMUM OF 25 WASHINGS

LIGHTED MATCHES BURN OUT

All J. C. Penney advertisements of this mattress pad contain a drawing of a lighted cigarette shown on the mattress pad. Immediately beneath the drawing the claim is made "Resists flame!"

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import and meaning, published in five successive J. C. Penney mail order catalogs and in other advertising material, representations have been made directly or by implication:

a) That the entire mattress pad had been treated with a flame retardant chemical.

b) That the entire pad would retard and resist flames.

c) That the flame retardancy lasts for the life of the pad under any conditions of laundering.

d) That the flame retardancy lasts for a minimum of 25 washings.

e) That a lighted cigarette is a flame.

f) That a flame retardant cotton top, quilt-stitched to a flame retardant polyurathane foam backing, will retard and resist flames.

g) That the treated pad provides complete protection against the hazards caused by flames.

PAR. 6. In truth and in fact:

a) The entire mattress pad had not been treated with a flame retardant chemical.

b) The entire pad will not retard and resist flames.

c) The flame retardancy of the pad will not last for the life of the pad under any conditions of laundering.

d) The flame retardancy does not last for a minimum of 25 washings.

e) A lighted cigarette is not a flame.

f) A flame retardant cotton top, quilt-stitched to a flame retardant polyurathane foam will not retard and resist flames.

g) The treated pads do not provide complete protection against the hazards caused by flames.

PAR. 7. Respondent furthermore has failed to disclose in its packaging, labeling and advertising of said product, material and relevant facts related to the proper laundering of said product necessary to preserve the flame retardant finish. Respondent has failed to provide clear and conspicuous warnings to prospective purchasers and purchasers of said product that the use of

chlorine bleach, soap, and hot water temperatures will negate the effect of the flame retardant chemicals in the cotton top and polyurathane foam backing of the pad.

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. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices and its failure to disclose material facts, as set forth in Paragraphs Four through Seven above, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements and representations were and are true and complete, and into the purchase of substantial quantities of said products.

PAR. 9. 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 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 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 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 J. C. Penney Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1301 Avenue of the Americas, 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 J. C. Penney Company, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device in connection with the advertising, offering for sale, sale and distribution of mattress pads, mattress covers, sheets, pillow cases and pillow protectors, 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 pad which gave rise to this complaint to alert them to the fact that the top, bottom and skirt portions of such pad had been treated with a flame retardant chemical, but that the binding tape portion, which joins the top of the pad to the skirt portion, may have not in some cases have been so treated; therefore, purchasers should not expect complete protection against all types of flames.

*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 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

PEPSICO, INC.

*Docket 8903. Interlocutory Order, Feb. 7, 1973.*

Rejection of respondent's offer of settlement and returning case to adjudication for further proceeding under Part 3 of the Commission's Procedures and Rules of Practice.