

Decision

IN THE MATTER OF

THE L. BUCHMAN CO., INCORPORATED, ET AL.

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

Docket 6133. Complaint, Oct. 28, 1953—Decision, June 30, 1955

Order requiring a manufacturer in Brooklyn, N. Y., to cease misrepresenting the feather and down content of its pillows on labels affixed thereto or otherwise.

Mr. Ames W. Williams for the Commission.

Davidson, Cohen & Zelkin, of New York City, for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents have violated the provisions of the Federal Trade Commission Act by misrepresenting the contents of feather pillows which they manufacture and distribute in commerce.

After the filing of an answer, hearings were held, in which testimony and other evidence was presented, duly recorded and filed in the office of the Commission. By stipulation all the evidence in the companion feather cases was made a part of the record in this case, except so far as such evidence relates exclusively to the identification, contents and analyses of the feather samples in each of those cases.¹ Proposed findings of fact, conclusions and order have been submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondent, the L. Buchman Co., Incorporated, 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 100 Sutton Street, Brooklyn 22, New York.

Respondents Irving Buchman, Sylvan Buchman and Tillie Buchman are the officers of the corporate respondent. Irving Buchman and Sylvan Buchman, father and son, are active in the business and direct and control the policies and practices of the corporate respondent. Tillie Buchman is inactive in the business, and does not partici-

¹ The companion feather cases are: Docket 6132, National Feather & Down Company; Docket 6133, The L. Buchman Co., Inc., et al.; Docket 6134, Burton-Dixie Corp., et al.; Docket 6135, N. Sumergrade & Sons, et al.; Docket 6137, Northern Feather Works, Inc., et al.; Docket 6161, The Salisbury Co., et al.; Docket 6188, Globe Feather & Down Co., et al.; and Docket 6208, Sanitary Feather & Down Co., Inc., et al.

pate in the direction or control of said corporation. Respondent Murray Steinberg had severed his connection with the corporation and its business activities prior to the issuance of the complaint. During the proceeding a motion was made by counsel for respondents that the complaint be dismissed as to respondent Murray Steinberg, and counsel in support of the complaint stated that he did not object.

2. Respondent corporation and respondents Irving Buchman and Sylvan Buchman are now, and for more than one year last past have been, engaged in the manufacture and sale of pillows, and other products, designated as down and feather products, to dealers for resale to the public. Said respondents have caused and now cause said products, when sold, to be shipped from their place of business to purchasers thereof located in various other States of the United States.

Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said feather and down products, in commerce, among and between the various States of the United States.

3. In the course and conduct of their aforesaid business, said respondents are now, and have been, in substantial competition in commerce with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of feather and down products, including pillows.

4. In the course and conduct of their aforesaid business, said respondents have caused labels to be affixed to certain of their pillows purporting to state and set out the kinds or types and proportions of filling materials contained therein, and have made representations with respect to respondents' pillows designated "Devon," as follows:

ALL NEW MATERIAL
consisting of
DOWN 10%
DUCK FEATHERS 90%

and with respect to one of respondents' pillows, designated "Mansfield,"

SECOND HAND MATERIAL
consisting of
WHITE GOOSE DOWN

5. Through the use of the aforesaid statements, said respondents have represented that the filling material in the pillows designated "Devon" is composed of 10% new down, and 90% new duck feathers; and that the filling material of the pillow designated "Mansfield" is composed entirely of second-hand white goose down.

1319

Decision

6. Two pillows designated "Devon," which were manufactured by respondents and filled from the same mixture of feather and down, were procured by a representative of the Commission from a retail dealer in Manchester, New Hampshire, and introduced in evidence. The contents of these pillows were analyzed by an expert for the Commission and by an expert for the respondents. The analyses made by the Commission's expert showed as follows:

	Pillow 1 (by weight)	Pillow 2 (by weight)	Computed average
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Down.....	2.4	2.6	2.5
Duck feathers.....	91.5	87.4	89.45
Chicken feathers.....	2.5	6.9	4.7
Fibers.....	2.4	1.9	2.15
Pith and scale.....	1.2	1.2	1.2
	<i>Grams</i>	<i>Grams</i>	
Amount analyzed.....	5.073	4.1769	

Respondents' expert made but one analysis of the contents of the two pillows, which showed the following:

	<i>Percent by weight</i>
Feathers.....	97.0
Down.....	2.2
Waste.....	0.8

With respect to respondents' pillow designated "Mansfield," the analyses were as follows:

	<i>Percent by weight</i>
By the Commission's expert:	
Goose down (second-hand).....	80.3
Small downy goose feathers.....	14.9
Fibers.....	4.9
Pith and scale.....	0.8
By respondents' expert:	
Down and down fiber.....	97.6
Feathers.....	2.4

7. In determining whether or not the representations as to the pillow contents are false within the meaning of the Act, it is helpful to have an understanding of the manufacturing methods used in the feather industry.

(1) In general, three sources of feather supplies are or have been available.

(a) *The American Source*

First, there are the domestic feathers, which ordinarily are properly labeled, but are not available in sufficient quantities to meet the industry's requirements.

(b) *The European Source*

Second, there is the European source of supply from which feathers are procured, but from this source it is impossible to get unadulterated new stock, because of a common practice of mixing second-hand feathers with new. European feathers are purchased on the basis of samples, and each manufacturer must judge from these samples the quality and type of feathers available to him.

(c) *The Oriental Source*

The third source is the Orient, from which adequate supplies may be had; but in the Orient there is no careful sorting, and a bale of feathers purchased as goose feathers may contain substantial quantities of duck or chicken feathers. These feathers are usually purchased through importers and commission merchants who submit offers to manufacturers. A typical offer will show as available for purchase by respondents or other pillow manufacturers 100 bales of 200 pounds each at 90¢ per pound, the feathers being Formosan grey goose feathers, 90% clean, maximum 20% duck feathers, 5% chicken feathers, 3% quills, minimum 30% down. Oriental feathers are purchased on the basis of these representations, without sampling.

(2) After raw feathers are procured by the manufacturer they are thoroughly washed, dried and fluffed up. Then they are sorted by means of a machine which separates the various constituents of the feather bulk by a blowing or suction process. The feathers are put through the sorting machine in lots of fifty pounds. The down, being lighter, is more readily blown over the baffle in the sorting machine, and passes into its particular bin or container. Then follow the downy-type feathers, and the various other feathers, in appropriate classifications according to weight or specific gravity, each into a specially prepared container. By this process it is reasonably practical to segregate a high percentage of down, but in down, as in the other classifications, there are always some feathers which are inappropriate to the particular classification. In the downy-type feather receptacle will be some pure down and some heavier-type feathers. Similar discrepancies will occur in each of the other classifications. It is impossible to separate feathers according to type of fowl or to remove inferior or second-hand feathers. The only possible separations are those which can be obtained by the application of the principles of specific gravity. Feathers of the same degree of lightness will go over the baffle at the same time, irrespective of the kind of fowl from which they may have been plucked, or whether they are new or used.

(3) The down and feathers thus sorted and placed in separate containers have no uniformity or homogeneity; the heavier feathers will be at the bottom, the down at the top of each container. Although there be a vigorous agitation of the feathers and down in a storage bin, the resulting mixture will at no time be of uniform content throughout, and no mixture of feathers and down is or will remain uniform or constant throughout its bulk. When a pillow order is to be made up, the manufacturer puts into the filling bin the number of bags of each type of feather requisite to obtain the desired mixture. The filling bins usually are approximately 5 x 10 x 12 feet in size, and hold up to 350 or 400 pounds of feathers. Two or three hundred pairs of pillows may be filled out of one mixture, and it is not unusual for a manufacturer to fill from twelve to fourteen hundred pairs of pillows during a day.

(4) During the filling process, the feathers are agitated by means of wooden forks, and the pillows are filled by suction. The proportion of down and feathers that go into each pillow depends partly, of course, upon the filling-bin mixture, but also to a large extent upon what part of the bin the filling suction reaches. Even with the exercise of the greatest care, pillows filled from the same bin vary in content. Those being filled from the bottom of the bin will contain the heavier feathers, and the greater amounts of pith, scale, and other extraneous matter. The exact amount or proportion of down and feathers going into any particular pillow cannot be controlled by mechanical means. The expert whose testimony was presented in support of the complaint stated that the contents of pillows filled from the same bin will vary as much as 30%; that the same percentage will not be found in any two pillows; that the mixture in each pillow will vary from the mixture in the filling bin; that if any one pillow should contain exactly the same percentage of feathers and down as that originally placed in the filling bin, it would be pure accident; and that the closest practical indication of the contents of a pillow product of a manufacturer and the correctness of its labeling will result if several different pillows are sampled, preferably pillows obtained at different times and places.

(5) The same difficulties arise in analyzing the contents of a single pillow. Except by pure accident, no two samples will have the same content; so there is no sure or positive method of measuring the contents of feather pillows with scientific accuracy, other than by taking all of the content out of the pillow and separating it into its component elements, then weighing each element. Such a process is so completely impractical that, usually, a test is made by opening the pillow-ticking and taking samples from three different portions of the pillow. These

samples are thoroughly mixed and a smaller testing sample, of which the analysis is to be made, is taken from this mixture. The expert who testified in support of the complaint selected three samples from the opening by inserting his hand and reaching to different portions of the pillow. Samples selected by the respondents were obtained by taking a small quantity of feathers from each of three openings in each pillow. The hearing examiner was present when respondents' samples were taken. As each opening was made in the pillow ticking, some down escaped, and as each withdrawal was made, more down escaped before the sample could be enclosed in a container; while the feathers, being heavier and bulkier, were easier to retain. No sample can be exactly representative of the original content of the pillow, just as the content of no one pillow can be exactly representative of the original mixture in the filling bin. The average sample for analysis weighed approximately 3 grams, representing between $\frac{1}{4}$ and $\frac{1}{2}$ of 1% of the contents of a pillow, and the appearance of a single heavy feather in a sample of this size would make as much as 4% difference in the final result. This method is far from satisfactory, and the resulting percentages are not conclusive.

(6) The crushing or curling process is a manner of giving a twist or curl to landfowl feathers, such as chicken and turkey, to increase their resiliency and tend to prevent their matting, and thus improve their quality for use as pillow-filling material. The same process is applied to waterfowl quill feathers (that is, feathers from the wings and tails of ducks and geese), which otherwise would not be suitable for pillow-filling material. A considerable amount of fiber, pith and scale result from the crushing, and are carried over into the filling mixture. As to utility, crushed landfowl feathers are better than crushed waterfowl feathers, and crushed turkey feathers are better than crushed chicken feathers.

The mixture of crushed feathers is made by weighing out the proper proportions of the various kinds of crushed feathers that are to be mixed, and taking alternate handfuls of feathers from the separate containers and throwing these into the hopper of the curling or crushing machine. Because of the nature of these larger feathers, they frequently go through the hopper in lumps, so that it is impossible to get a mixture with any degree of homogeneity. Despite agitation in mixing, slugs of chicken or turkey feathers and slugs of quill feathers will get into the pillows without ever being separated or mixed. The label "Crushed Feathers," showing the types of feathers used, can indicate no more than that the mixture was made from the types or kinds of feathers stated on the label.

