

Syllabus

IN THE MATTER OF

JACOB WOODNICK AND PHILIP WASSERMAN AS CO-PARTNERS, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES, ENTERPRISE FURNITURE FACTORY, AND ENTERPRISE UPHOLSTERED FURNITURE COMPANY.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1569. Complaint, Feb. 21, 1929—Decision, Jan. 30, 1930

Where two partners engaged in selling to the public and to retailers furniture bought by them from the manufacturers in a completed state, excepting only certain three-piece living room suites of davenports and chairs, which still required to be and were by them upholstered; with the expectation that such false representations of material facts, made with the knowledge of their falsity and as an inducement to buy, would be relied upon by purchasers,

- (a) Used in their said business a trade name including the words "furniture factory" and displayed and featured said name on large signs on their four-story building and in advertising dining room, bedroom, said living room, and other suites, and tables, chairs, springs, mattresses, etc., dealt in, together with depictions of said building and signs; and
- (b) Represented themselves as furniture manufacturers offering their said products directly to the consumer, with consequent savings and advantages through direct purchase, and otherwise through direct dealings with the factory, making such statements in offering the different suites and articles as "Why not look over our factory and prices now?" "Our factory price for this beautiful suite now only \$149. You save at least \$125 on this purchase," "Enterprise Furniture Factory. Save 50 per cent. Factories—Reading—Harrisburg—New Brunswick, N. J. Enterprise makes (list of States) The country takes," "The greatest opportunity to refurnish your home with all new furniture at factory prices," "Are you getting most for your money? Make sure—See this factory first," "Bedroom and dining room suites at factory prices," "Come in and see how your furniture is built." "We are a factory by itself. We sell direct to the consumer." "New 1928 styles are here now for your selection. As manufacturers we get the styles ahead of the retail dealers. You can now select from the very newest styles * * * buy direct and save 50 per cent," "You save here on our low rent and one profit," "Our factory must be kept busy at all times," "Being equipped with a large factory we can absolutely guarantee the construction to be the best in the state * * *," "What Enterprise can do no retail store can";

With the tendency and capacity to mislead and deceive members of the public into believing its said place or places of business to be furniture factories and said partners to be manufacturers of the aforesaid davenports and chairs and other furniture dealt in, charging purchasers only the one manufacturer's profit, and saving said purchasers the profits of middle-

use of unfair methods of competition, in commerce, in violation of the provisions of said act.

The respondents having filed their answer herein, hearings were held and evidence was thereupon introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on the briefs and oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jacob Woodnick resides in Wyomissing, in the State of Pennsylvania. Respondent Philip Wasserman resides in the city of Reading in Pennsylvania.

The respondents are copartners and, as such copartners, they have been at all times since on or about the year 1920, and they are now, engaged in business in the sale of household furniture, at No. 630 Court Street in the city of Reading, Pa.

For a period of about three years prior to and ending on or about December, 1928, respondents conducted a branch place of business in the sale of household furniture at No. 206 South Second Street in the city of Harrisburg, Pa.

Since 1928 respondents have had and now have a branch place of business at Schuylkill Haven, Pa.

For short periods of a few months each between the years 1921 and 1928 respondents also had branch places of business in Pottsville and Lansford, Pa.

PAR. 2. Respondents are now and have been continuously, during the times above mentioned and referred to, engaged in their said business in the sale of articles or pieces of furniture for use in furnishing homes, which respondents have sold, and now sell, separately, or in suites as dining-room, bedroom, library, parlor or living-room suites, both at retail to members of the public for their own use and to individuals, firms, and corporations, retail dealers, for resale, located in the District of Columbia and in various States of the United States other than the State of Pennsylvania, and respondents caused their furniture, when sold by them, to be transported in commerce from their said places of business in Pennsylvania to, into, and through said other States and the District of Columbia to the members of the public and to the said individuals, firms, and corporations, to whom respondents sold their furniture as aforesaid.

PAR. 3. During the times above mentioned and referred to, other individuals, firms, and corporations in the various States of the United States have been engaged in the sale and delivery of furniture for use in furnishing homes as above described, both to members of the public for their own use and to individuals, firms, and corporations for resale, located in the District of Columbia and in the various States of the United States other than the State of origin of the shipment.

The respondents during the aforesaid times were, and still are, in competition in commerce between the States above referred to and between said States and the District of Columbia in the sale of their furniture with said other individuals, firms, and corporations.

PAR. 4. Respondents, during the aforesaid times, bought from others, manufacturers thereof, all that part of their stock in trade of furniture consisting of bedroom suites of 4 to 11 pieces; dining-room suites of 7 to 14 pieces; and library suites composed of several pieces each and, in the regular course of their business, sold the furniture of which these suites consisted either in suites or as separate articles of furniture, and in the same condition in which the said furniture was when bought by respondents from the manufacturers.

The respondents, in addition to the bedroom, dining room, and library suites of furniture, bought from others, manufacturers thereof, during the aforesaid times, many other articles of furniture, including tables, chairs, box springs, mattresses, all-metal stands, floor lamps, bridge lamps, and rugs, which the respondents in the regular course of their business sold in the same condition that they were in when bought by them from the manufacturers.

The respondents employed no process of manufacture or finishing process whatever in the completion of any of the furniture, just above described, before selling the same to the purchasers.

PAR. 5. The only other furniture sold by respondents in the regular course of their business during the aforesaid times, consisted substantially of only three pieces or articles of furniture, a davenport and two chairs, usually described and referred to by respondents as living room furniture or living room suites.

Some of the furniture described or referred to as living room furniture the respondents bought from others, manufacturers thereof, completely made and ready for sale by respondents and for use by respondents' purchasers in furnishing their homes.

PAR. 6. Some, only, of the furniture sold by them in their said business, the respondents bought from others, manufacturers thereof,

in an unfinished condition, and respondents caused this furniture to be finished at their places of business in Reading and Harrisburg before its sale by them.

The part of the furniture which respondents so bought and caused to be finished before sale was and is confined solely to a part, only, of the living room furniture (living room suites consisting of three pieces, a davenport and two chairs). Some of their living room suites the respondents, as above stated, bought entirely completed and in exactly the same condition as it was when sold by them to purchasers for use in homes.

The living room furniture, a davenport and two chairs to a suite, which respondents bought incomplete and caused to be finished at their said places of business before selling the same, was, when bought by respondents, completed as to the woodwork or frames thereof by the manufacturers from whom respondents purchased it, and all that remained to be done to complete such furniture was its upholstering. Such furniture was, when delivered to respondents by the manufacturers thereof, in the lasting and permanent form of davenports and chairs.

Such furniture was in substantially the same condition, as such furniture is in, when after long usage in a home, the householder delivers it to an upholsterer to be reupholstered. In the reupholstering of such furniture substantially all is done that respondents cause and have caused to be done to complete said living room furniture at their places of business before selling it to the public.

In the upholstering of living room furniture the respondents employed at times in their place of business in Reading, Pa., as many as 12 workmen.

PAR. 7. Respondents' place of business in the city of Reading, Pa., is a large 4-story building and across the entire front of the building respondents maintained large signs with the words thereon:

ENTERPRISE FURNITURE FACTORY

and a large sign extending vertically from the top of the building to the ground floor which is illuminated by electric lights and on which is inscribed the words:

ENTERPRISE FURNITURE FACTORY

PAR. 8. In a newspaper, The Reading Eagle, published at Reading, Pa., respondents caused an advertisement to be published on June 10, 1927, in which appeared, among others, statements as follows:

Tomorrow—Dollar day—Saturday

\$1 will buy the following items at this factory on Saturday:

Floor lamp complete—davenport table—box spring—Silk floss mattress—reed rocker—leather rocker—buffet mirror—overstuffed chair or rocker, with the purchase of a *living room, dining room, or bedroom suite*.

The above advertisement contained pictorial illustrations of a 3-piece living room suite consisting of a davenport and two chairs and also of a bedroom suite consisting of a bed and several other pieces of furniture. On the margins of the advertisement was the statement:

Economize at the Enterprise Furniture Factory, 630 Court Street.
and the advertisement was subscribed in large letters as follows:

THE ENTERPRISE FURNITURE FACTORY

The Largest Furniture Factory in Reading, 630 Court Street.

PAR. 9. In a newspaper, The Patriot, published at Harrisburg, Pa., respondents caused an advertisement to be published on June 10, 1927, in which appeared, among others, statements as follows:

Don't miss it—Now going on.

The greatest opportunity to refurnish your home with all new furniture at *factory prices*.

Trade in your old living room, bedroom or dining room suite and use the \$25 as a deposit on a new suite.

Buy now and save. See our special living room suite for this trade-in sale built your way at factory prices.

BEDROOM AND DINING ROOM SUITES AT FACTORY PRICES

The said advertisement was subscribed in large letters as follows:

THE ENTERPRISE FURNITURE FACTORY

Our only factory in Harrisburg, 106-108 South Second Street, Harrisburg.

PAR. 10. In the said newspaper, The Reading Eagle, respondents caused an advertisement to be published on June 16, 1927, in which appeared, among others, statements as follows:

Style and quality are just as important as price.

You should see this factory before buying your furniture, and you will see the reason Enterprise customers are boosters of this factory.

\$100 to save on your living room suites is as good to you as to anybody else.

Why not look over our factory and prices now?

Our factory price for this beautiful suite now only \$149.

You save at least \$125 on this purchase.

Dining room suites priced from \$98 to \$1,000.

Bedroom suites priced from \$79 to \$975.

Living room suites priced from \$95 to \$2,800.

Findings

13 F. T. C.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT

SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 11. In the said newspaper, The Reading Eagle, the respondents caused an advertisement to be published on June 19, 1927, which contained, among others, statements as follows:

Are You Getting Most For Your Money?

Make sure—See this factory first.

You should see this factory before buying your furniture, and you will see the reason Enterprise customers are boosters of this factory.

\$100 to save on your living room suite is as good to you as to anybody else.

Why not look over our furniture and prices now?

Our factory price for this beautiful suite is now only \$119.

You save at least \$100 on this purchase.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT

SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J.

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 12. In The Reading Eagle aforesaid, the respondents caused an advertisement to be published on June 24, 1927, in which there were pictorially illustrated a 3-piece living room suite of furniture consisting of a davenport and two chairs, a 10-piece dining room

161

Findings

suite and a bedroom suite. The advertisement further contained, among others, statements as follows:

JULY CLEARANCE SALE

You save here on our low rent and one profit.
What Enterprise Factory can do no retail store can.

SAVE 50 PER CENT

Visit this factory now—Select your needs—Have it delivered when you are ready for it.

Everything sold during this sale is guaranteed 100 per cent.
You can select from our stock or have it made to your order.
Come in and see how furniture is built.
The advertisement was subscribed as follows:

ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading, 630 Court Street.

PAR. 13. In a newspaper, The Evening News, published at Harrisburg, Pa., respondents caused an advertisement to be published on June 24, 1927, in which appeared, among others, statements as follows:

ENTERPRISE FURNITURE FACTORY

Saturday \$1 will buy the following items at our factory on Saturday only:
Floor lamp complete, davenport, tables, box spring, silk floss mattress, buffet mirror, Windsor chair or rocker, console table or mirror,
With the purchase of a living room, dining room, or bedroom suite.

BEDROOM AND DINING ROOM SUITES AT FACTORY PRICES.

THE ENTERPRISE FURNITURE FACTORY

Our only factory in Harrisburg, 106-108 South Second Street, Harrisburg

PAR. 14. In The Reading Eagle aforesaid, the respondents caused an advertisement to be published on June 29, 1927, in which appeared, among others, statements as follows:

JULY CLEARANCE SALE

What Enterprise Factory can do.
Treat yourself to the best.
Visit this factory now—Select your needs—Have it delivered when you are ready for it.
You save here on our low rent and one profit.

SAVE 50 PER CENT

Come in and see how your furniture is built.

Findings

13 F. T. C.

ENTERPRISE FURNITURE FACTORY

SAVE 50 PER CENT

SAVE 50 PER CENT

FACTORIES—READING—HARRISBURG—NEW BRUNSWICK, N. J.

ENTERPRISE MAKES

Illinois
Michigan
Massachusetts
New York
New Jersey
Pennsylvania
Vermont

THE COUNTRY TAKES

PAR. 15. The respondents caused to be published and circulated in the year 1928 a large 4-page advertisement of about 18 inches by 24 inches, approximately of the page size of the large metropolitan daily newspapers. In this advertisement there was a pictorial illustration of respondents' place of business on which were displayed the large signs, Enterprise Furniture Factory; and in connection with this illustration of respondents' place of business were the following statements:

Look for this large 4-story red building.
We have no show windows
Factory and salesroom, 630 Court Street.

SAVE 50 PER CENT

Our Reading factory is 1-minute walk from Sixth and Penn Streets.

Be sure when you come back on Court Street to look for this building with the red signs. Our building has no show windows, neither does it adjoin any furniture store that faces on Penn Street. We are absolutely not connected with any furniture store in Reading. We are a factory by itself. We sell direct to the consumer.

Look for 630-652 Court Street and save 50 per cent.

The advertisement contained, among others, pictorial illustrations of an 11-piece bedroom suite and a 14-piece dining room suite.

Among other statements that appeared in said advertisement are the following:

You come here because we manufacture our own furniture, our low rent and only one profit for you to pay.

August furniture sale and exhibition.

NEW 1928 STYLES ARE HERE NOW FOR YOUR SELECTION

As manufacturers, we get the styles ahead of the retail dealers. You can now select from the very newest styles of suites and patterns and cover-

161

Findings

ings—imported and domestic cloths, something entirely new, that the retail dealer has had no opportunity to get hold of—buy direct and save 50 per cent.

Our factory must be kept busy at all times.

Our prices are now at this slow season of the year reduced to the minimum.

To make this sale the most talked of in our entire history, we have gone through our stocks and cut prices right and left, absolutely regardless of original cost or present day replacement value.

It's your one big chance to improve your home with new furniture at the lowest prices of the year, so *act at once* for the best choice.

Living room, bedroom, and dining room at savings never heard of in this State, which you, the consumer, as well as the wholesale buyer, can take advantage of.

CONSTRUCTION.—Being equipped with a large factory we can absolutely guarantee the construction to be the best in the State. We invite the public to come in and examine our furniture while it is being made.

PRICE.—As manufacturers selling direct to the consumer, we are in a position to save you about 50 per cent on anything you buy here.

The above are our cardinal principles and to uphold them we faithfully pledge.

With no obligation on your part, you may phone or write to us, and our service car will call for you and bring you back to your home, if you desire to visit our factory and examine our furniture. The above service is extended to anywhere within 50 miles from Reading.

Carfare returned anywhere within 100 miles.

On the back page of this advertisement there were pictorially illustrated from the top to the bottom of the center of the page a living room suite showing a davenport and two chairs, a bedroom suite of 11 pieces and a dining room suite of furniture of 14 pieces. Above the illustrations of these three suites was the statement:

CHOICE OF THESE \$400 FURNITURE SUITES \$178

In connection with each of these living room, bedroom, and dining room suites the price was displayed as follows:

\$178

WORTH \$400

Other separate articles of furniture such as reed chairs and rockers, davenport tables, and lamps were displayed in said advertisement. The lamps were pictorially illustrated with their shades and statements made concerning the lamps were contained in a section of the advertisement blocked off from the rest of the page and

Findings

18 F. T. C.

within this section containing the illustrations and advertisement of the lamps the following statements appeared:

BRIDGE LAMPS**As Low As \$2.75**

Floor lamps with beautiful silk shades are priced as low as \$7.95 for this sale. Many different designs in bases and shades to select from. Also a choice offering of reading lamps, bridge lamps and table lamps.

Come and visit our factory.

The pages of the advertisement were subscribed:

THE ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading

Look for the red signs, 630-652 Court Street

PAR. 16. The respondents caused an advertisement to be published in *The Reading Eagle*, above mentioned, on February 17, 1929, which contained pictorial illustrations of a living room suite and a bedroom suite of furniture and, among others, statements as follows:

February furniture sale and exhibition.

New line of 1929 models are here for your selection.

We have no show windows—look for the large 4-story building with the red signs.

Save about 50 per cent

We invite all our friends and dealers who for the past 8 years have been handling our custom built furniture, or bought for their own use, to visit our factory and inspect the latest models in the new modern and period designs, also the newest of imported and domestic coverings.

In appreciation of the public approval of this factory we have priced our *living room, dining room, and bedroom, suites* at savings never heard of in the State, which you the consumer, as well as the retail dealer, can take advantage of.

Where the finest furniture in the State is built

THE ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading

PAR. 17. In 1929 the respondents caused to be published and circulated a 4-page double sheet advertisement similar to the advertisement described in paragraph 15 hereof and containing pictorial illustrations of bedroom and dining room suites of furniture and of single articles of furniture such as reed rockers, mirrors, end tables and console tables and kitchen cabinets.

The said advertisement contained, among others, statements as follows:

FEBRUARY FURNITURE SALE AND EXHIBITION

This 1929 February sale surpasses any sale that we have ever held in greatness of values and in completeness of the exceptionally large assortment of living, dining, and bedroom suites.

Surprise after surprise will greet you when you visit our factory display rooms and see the extremely low prices. Quality and price talks, therefore if you see what we are offering you will be convinced that the Enterprise Furniture Factory sale is the greatest sale in the history of all sales. Take advantage of these sensational savings, tell your friends. Act while assortments are large. Don't hesitate but investigate and buy right now and Save! Save! Save! This is not a sale of odds and ends. Our complete stock of fine furniture has been gone over and reduced tremendously for this great sale.

Look for this large 4-story building with the red signs.

SAVE 50 PER CENT

5-YEAR GUARANTY BOND

This is to certify that any living room, dining room, or bedroom suite sold at this factory has been thoroughly inspected and tested and found to be up to the highest standard and is hereby guaranteed by us for a period of 5 years against defect of workmanship and construction. We also guarantee the cabinet work and the filling used in the construction of our living room suites to be of highest grade. Any part of construction proving defective during the above-mentioned period will be replaced free of charge.

ENTERPRISE FURNITURE FACTORY

630-652 Court Street

Reading, Pa.

PAR. 18. In The Reading Eagle, above mentioned, the respondents caused an advertisement to be published on May 22, 1929, which contained a pictorial illustration of a 10-piece dining room suite of furniture and, among others, statements as follows:

TO JUNE BRIDES

and every buyer of a

LIVING ROOM, BED ROOM, or a DINING ROOM SUITE

Free—an attractive 9 by 12 rug—Free

THE ENTERPRISE FURNITURE FACTORY

The largest furniture factory in Reading

Findings

13 F. T. C.

PAR. 19. In The Reading Eagle, above mentioned, respondents caused an advertisement to be published on May 24, 1929, in which a 10-piece dining room suite and a 4-piece bedroom suite of furniture were pictorially illustrated and in which lamps and foot stools were advertised.

The said advertisement contained, among others, statements as follows:

DOLLAR DAY AT THE

ENTERPRISE FURNITURE FACTORY

\$1 will buy a 9 by 12 rug with a purchase of a living room, bedroom, or dining room suite.

The Enterprise Furniture Factory, the largest furniture factory in Reading.

PAR. 20. Respondent Woodnick learned the trade of an upholsterer before becoming a copartner with respondent Wasserman and worked at that trade for about eight or nine years.

To upholster is to provide with textile coverings, together with cushions, stuffing, springs, etc.

An upholsterer is one who upholsters or provides and puts in place textile coverings for furniture and the like.

PAR. 21. Respondents caused cambric, webbing, springs, burlap, moss, hair, carded cotton, denim, edging, and velour or tapestry coverings to be stitched together and fashioned into cushions for the seats and backs of the davenports and chairs comprising the living room suites bought by them in an unfinished condition, and the same materials excepting the springs were used by respondents in upholstering the arms of the chairs and the ends of the davenports, and such material constituted substantially all of the material used by respondents in the finishing or upholstering of living room furniture.

PAR. 22. The davenports and chairs, which respondents bought in an incomplete condition and upholstered or finished, as above set forth, were properly designated furniture before they were furnished with upholstering by respondents and such articles in said condition, before being upholstered, have been generally understood by the public to be furniture.

Those who have constructed such articles in the form of a davenport and chairs without upholstering them are manufacturers of them and are by such construction generally understood to be manufacturers of furniture, and their places of business as furniture factories. Their product, standing alone without upholstering, has the form and character of furniture. The upholstering applied to their product, apart from the objects to which it is applied, has not the form or character of furniture.

The thought of upholstering implies the prior existence of furniture.

The thought of furniture does not necessarily imply the existence of upholstering.

PAR. 23. After furniture has been upholstered, used, and worn, it is often sent to upholsterers to be reupholstered—to be refurnished with the same kind of materials and fashioned in the same way that respondents have furnished their said furniture.

Those who reupholster furniture and, in doing so, furnish it with the same kind of materials, fashioned in the same way that respondents employ and have employed in upholstering living room furniture are not, and have not been, considered by the public to be the manufacturers of the articles so upholstered by them, nor have their places of business been considered to be furniture factories.

Those who upholster or reupholster furniture are and have been designated and described as upholsterers of furniture or manufacturing upholsterers to distinguish the operations which they perform and the materials which they use from operations and materials of those manufacturers whose creations are in the lasting and permanent forms, before being upholstered, that gives them spontaneous recognition as specific articles of furniture.

PAR. 24. The living room furniture that respondents have upholstered and sold in their business was, in the condition in which it was sold by respondents, the joint product of the respondents and others who were the manufacturers of the articles upholstered by respondents.

Respondents have not been, and are not, the manufacturers of upholstered furniture or of any kind of furniture that they have sold in their said business and their place or places of business are not and have not been furniture factories.

PAR. 25. The statements or representations published in newspapers mentioned or referred to in paragraphs above mentioned, Nos. 10, 11, and 14, that the respondents had at the times referred to in said advertisements a furniture factory in New Brunswick, N. J., were false and misleading. The respondents, either as co-partners or individually, have not at any time owned or operated a furniture factory in New Brunswick, N. J.

PAR. 26. The use by respondents of the word "factory" in the trade name, "Enterprise Furniture Factory," was and is false and misleading and it has the tendency and capacity to mislead and deceive members of the public into the belief that respondents' said place or places of business are furniture factories and that respond-

Findings

13 F. T. C.

ents are and have been the manufacturers therein of the davenport and chairs which they offer for sale and have sold as living room furniture.

The said use of the word "factory" in respondents' trade name has the further tendency and capacity to mislead and deceive members of the public into the belief that respondents are and have been the manufacturers not only of the living room furniture but also of all the other furniture offered for sale and sold by them.

PAR. 27. The pictorial representations of dining-room and bedroom suites of furniture and other articles of furniture which respondents caused to be published in advertisements in newspapers and otherwise, subscribed with the name "Enterprise Furniture Factory" in large letters, and in connection with which the respondents stated that the furniture described in the advertisements was offered for sale and exhibition and would be sold at their said "factory"; and the statements in said advertisements that respondents were offering purchasers the opportunity to refurnish their homes with all new furniture at factory prices; that as manufacturers selling direct to the consumer respondents were in a position to save purchasers about 50 per cent on anything they bought at respondents' places of business; that as manufacturers respondents got the styles ahead of the retail dealers and that "What Enterprise Factory can do no retail store can," and that purchasers saved about 50 per cent by purchasing from respondents because of respondents' low rent and one profit, and other such statements made by respondents in said advertisements were each and all false and misleading statements and representations and each and all of said statements and representations have the tendency and capacity to mislead and deceive members of the public into the belief that the respondents' said place or places of business are furniture factories and that the respondents are and have been manufacturers therein of the furniture mentioned and referred to in respondents' said advertisements and the said representations and statements have the further tendency and capacity to mislead and deceive members of the public into the belief that as such manufacturers of furniture respondents were thereby in a position to save purchasers the profit which purchasers would be required to pay to retail dealers, competitors of respondents, if they bought furniture from such competitors, and which respondents were able to save to such purchasers by selling to them direct from their factory whereby purchasers from respondents paid only one profit, the manufacturer's, and saved the middleman's or retail dealer's profit; that respondents, by reason of their said factory and because they were

161

Order

manufacturers, were in a better position to serve the purchasing public as to style and quality of furniture than retail dealers and that as to all of their furniture, respondents, being equipped with a large factory, could absolutely guarantee the construction of the furniture sold by respondents to be the best in the State of Pennsylvania.

PAR. 28. The aforesaid use by respondents of the word "factory" in connection with their said places of business and in connection with the aforesaid representations, is a false representation of a material fact, made by respondents in the sale of furniture, to purchasers as an inducement to them to purchase respondents' furniture and made by respondents in the expectation that such representation would be relied upon by said purchasers and with the knowledge on respondents' part of the falsity thereof and that purchasers and prospective purchasers were and are ignorant of its truth or falsity.

The statements and representations of respondents, above mentioned, that respondents were offering purchasers all new furniture at factory prices; that as manufacturers selling direct to the consumer respondents were in a position to save purchasers about 50 per cent on anything purchasers bought at respondents' places of business; that as manufacturers respondents' alleged "factory" could do what no retail store could do, were each and all false representations of material facts in the sale of furniture, made by respondents to purchasers and prospective purchasers of their furniture in the expectation that such statements would be relied upon by such purchasers and with the knowledge on respondents' part that such statements and representations were false and that said purchasers were ignorant of the truth or falsity of the same.

CONCLUSION

The practices of the respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce and constitute a violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and upon the answer of the respondents filed herein, and the Commission having made

Order

13 F. T. C.

its findings as to the facts and its conclusion that the respondents have violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents above named, Jacob Woodnick and Philip Wasserman, their agents and employees, do cease and desist:

1. From displaying or otherwise using in the business of selling furniture in commerce among the several States of the United States or between any of the said States and the District of Columbia, the word "factory" or any word or representation whatsoever, designed to promote or otherwise affect such commerce, indicating a place of manufacture, to designate or describe any building or place of business in which the sale of furniture manufactured by others is offered for sale and sold in such commerce by respondents or by either of them.

2. From displaying or using the word "factory" in a trade name or description of a business conducted by respondents or either of them or from displaying or using any other word or representation whatsoever, designed to promote or otherwise affect such commerce, in such trade name or description of a business, indicating that respondents or either of them are manufacturers of furniture, offered for sale and sold by respondents, in commerce as aforesaid, which has been manufactured completely by others; or, that respondents are the manufacturers of articles of furniture, such as davenports and chairs, which have been manufactured by others completely except as to the upholstering of such articles.

3. From representing directly or indirectly, in the sale of furniture in commerce as aforesaid, in advertising or otherwise, that respondents or either of them, are manufacturers of furniture made wholly by others or that they are manufacturers of articles of furniture, sold by respondents in commerce as aforesaid, such as davenports and chairs, which have been made by others complete, except as to the upholstering of such articles.

It is further ordered, That the respondents, Jacob Woodnick and Philip Wasserman, shall, within 30 days after the service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with the above order to cease and desist.

Complaint

IN THE MATTER OF

C. H. SELICK, INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1672. Complaint, May 23, 1929—Decision, Feb. 1, 1930

Where a domestic corporation engaged in the sale of perfumes made by it in the United States of the cheaper grades of essential oils produced in foreign countries and by it purchased from a New York concern,

- (a) Labeled the bottles thereof "L'Are Narcisse—Jardeau—New York, Paris", "Lucienne—Paris, New York", and (at request of dealer customers) "Jay's Narcissus—Jay et Cie—Paris, New York", or "Bea Van et Cie—Paris, New York", together with the word "France" on the reverse side and in conspicuous letters on the bottle containers, in which displayed, offered and sold, thus labeled and designated, to the consuming public by dealer vendees; and
- (b) Depicted said labels and bottles first above referred to, in circulars distributed to the trade;

With the capacity and tendency to mislead and deceive vendees and many of the consuming public into believing said products to be perfumes made in Paris or France, long widely popular with and in demand by the domestic trade and consuming public and considered by many thereof as more desirable in the matter of quality and other characteristics than the home product and by them bought in preference thereto, and into purchasing its said perfumes in such belief, and with the result of placing in the hands of its dealer and peddler vendees the instrument and means for committing a fraud upon a substantial portion of the consuming public by enabling them to represent, offer and sell the same as made in the aforesaid city or country, and tendency to divert business from and otherwise injure and prejudice competitors importing and dealing in perfumes in fact there made or compounded and rightfully and lawfully so represented by them, and competitors dealing in the domestic product without in any manner misrepresenting the same as above set forth:

Held, That such practices were all to the prejudice of the public, and competitors and constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.

Santangelo & Lukas, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in compounding perfumes and other toilet preparations and in the sale thereof to retail dealers and peddlers, and with principal office and place of business