

Syllabus

IN THE MATTER OF

JOSEPH WARNER FURNITURE CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4416. Complaint, Dec. 13, 1940—Decision, Sept. 22, 1941

Where a corporation engaged in the interstate sale and distribution of household furniture, operating so-called dealer or trade showrooms in New York under the name "Salem House," and describing its business as "Exclusive Distributors of Salem House Furniture"; directly and by implication—

Represented that it was a wholesaler and was selling its furniture at wholesale prices, which, substantially lower than retail prices, are responsible for the well-known preference by a substantial portion of the public for purchasing at wholesale; and as part of its plan and scheme so to misrepresent the character of its business and the prices of its products—

- (a) Made such claims and statements in advertising matter, circular letters and so-called "admittance cards" which it circulated by mail and personally as "We are furniture distributors representing over 100 different factories," stocking every possible furniture need "to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving * * * is assured you";
- (b) Made such statements on their so-called "Admittance Permit" cards, as "ADMITTANCE PERMIT To the Trade Showrooms of the JOSEPH WARNER FURNITURE CORP. This card entitles ----- and party to all Showroom privileges, including price quotation * * *," and set forth on customer's copy of triplicate invoice of sales the words "Serving the Trade"; thereby implying that it sold only to or through dealers, that it was a wholesaler and sold to holders of such cards at wholesale prices, and that its business was something other than that of selling to the general public;
- (c) Furnished circulars to such persons and business concerns as would, for a commission, refer customers to it, to be shown to prospective customers, reading, in part, "Salem House Authorized Member Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories, * * *. Substantial savings";
- (d) Paid commissions on sales to customers sent to it by various persons and smaller business concerns, with whom it entered into agreements for the payment of such commissions, and who, in making such contacts and inducing prospective customers to go to its place of business and purchase its wares, made or repeated to them some or all of the aforesaid deceptive statements;
- (e) Hesitated or refused, through its salesmen and representatives to show furniture to prospective purchasers unless they gave their dealer's name or presented an "admittance card" from some person or concern with whom it had made an agreement, as above described, for the payment of commissions on sales made to such customers, and stated that the house

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sold only to dealers and was strictly wholesale, and that the net prices quoted were in fact the wholesale prices quoted to dealers; and

- (f) Stated to customers who came to its place of business, through its salesmen and representatives, that the net prices quoted to them for its furniture were at various discounts and reductions from the exaggerated prices marked thereon, and gave the purchaser the benefit of discounts or reductions of 20 to 60 percent below the ordinary retail prices, and were in fact wholesale prices;

With result of inducing the belief in its customers that it was a wholesaler and that they were buying from it at wholesale prices, when in truth and in fact its sales were not at wholesale prices nor in wholesale lots, but were to the ultimate consumer and user and not for resale, and the net prices quoted to its customers were not wholesale prices but were substantially higher, and did not represent 20 to 60 percent discounts from retail prices, and with effect, as a consequence thereof, of inducing a substantial portion of the purchasing public to purchase its said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. D. E. Hoopingarner for the Commission.

Mr. Benjamin S. Kirsh, of New York City, for respondent.

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 Joseph Warner Furniture Corporation, 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, Joseph Warner Furniture Corporation, 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 at 42 East Thirty-third Street (Two Park Avenue Building), city of New York, State of New York. Respondent is engaged in the sale and distribution of household furniture and conducts and operates so-called dealer or trade showrooms at said location under the name "Salem House." It designates and describes its business as "Exclusive Distributors of Salem House Furniture." When sales are made at said location, respondent causes the furniture sold to be transported from its said place of business in the State of New York to the purchasers thereof, many of whom are located in various States of the United States other than the State of New York

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and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. There is a well-known preference on the part of a substantial portion of the public for purchasing at wholesale, due to a general belief, and the fact, that wholesale prices are substantially lower than retail prices.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said products, respondent has made false, exaggerated, and misleading representations with respect to the character of its business and the value and prices of its products.

By various forms of advertising, circularizing, and by personal statements of its representatives and employees, respondent has directly and indirectly and by implication represented, and does represent, itself to be a wholesaler of furniture, and that it has been and is in fact selling furniture at wholesale prices.

As parts of respondent's plan and scheme so to represent the character of its business and the prices of its products, among other devices, acts and practices, respondent circulated by mail and personally advertising matter, circular letters and so-called Admittance Permit cards, containing the following statements and claims:

(a) We are furniture distributors representing over 100 different factories. We stock every possible furniture need in a very wide price range to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving, quality for quality, is assured you.

(b)

ADMITTANCE PERMIT

To the Trade Showrooms of the

JOSEPH WARNER FURNITURE CORP.

This Card entitles

and party to all Showroom privileges, including price quotation.

EXCLUSIVE DISTRIBUTOR OF SALEM HOUSE FURNITURE

(c) On the customer's copy of the triplicate invoice of sales appear the words "Serving The Trade."

(d) To persons and business concerns which, for a commission, would refer customers to respondent, respondent furnished circulars to be shown to the prospective customers, which read in part as follows:

"Salem House

Authorized Member

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Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories. 50,000 sq. ft. of furniture for every room in the home, in every price range. Substantial savings."

PAR. 4. As further parts of its said aforementioned plan and scheme to represent its business and prices as those of a wholesaler, and to more fully effectuate them, and to gain the advantages flowing therefrom, respondent carried on other acts and practices, among them the following:

(a) Respondent contacted various persons and smaller business concerns of various kinds and made agreements with them to pay, and did pay them commissions on sales to customers contacted by or sent to respondent by such persons and concerns, who, in making such contacts and inducing such prospective customers to go to respondent's place of business and purchase its wares, made or repeated to such customers some or all of the aforescribed misleading and deceptive statements.

(b) Its salesmen and representatives at its place of business hesitated or refused to show furniture to prospective purchasers unless they gave their dealer's name or presented a so-called admittance card from some person or concern with whom respondent had made an agreement as before described for the payment of commissions on sales to such customers, and stated that "This house sold only to dealers and was strictly wholesale," and that the net prices quoted were in fact the wholesale prices quoted to dealers.

(c) To retail customers who came to its place of business, respondent's salesmen and representatives stated that the net prices for its furniture quoted to such customers were at various discounts and reductions from exaggerated prices marked on its furniture, did in fact give the purchaser the benefit of discounts or reductions amounting to from 20 percent to as much as 60 percent below the ordinary retail prices of the same or similar wares, and were in fact wholesale prices.

PAR. 5. By some or all of the aforesaid statements, acts and practices, respondent, both directly and by indirection and implication, represented to, and induced the belief in, its retail customers that it was a wholesaler and was selling its wares to them, and that they were in fact buying from respondent, at wholesale prices, when in truth and in fact respondent is a retailer, and its sales were and are not at wholesale prices nor in wholesale lots, but were and are to the ultimate consumer and user and not for resale, and so intended and known to the respondent, and the net prices quoted to its customers were not wholesale prices, but were and are substantially higher than wholesale prices for the same or similar articles. Respondent does not sell said furni-

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ture at discounts or reductions from the ordinary retail prices of from 20 percent to 60 percent as represented.

PAR. 6. The aforesaid acts, practices, and methods are parts of, and together they constitute, a plan or scheme to mislead and deceive purchasers into the belief that they are buying at wholesale prices; and the use of the aforesaid acts, practices and methods, in connection with the sale and distribution of respondent's said furniture in said commerce, has misled and deceived, and does mislead and deceive, purchasers into the erroneous and mistaken belief that respondent sells its said furniture at wholesale prices, and at the discount or reductions from the usual retail prices indicated, and induces a substantial portion of the purchasing public, as a result of said erroneous and mistaken belief, to purchase respondent's said products.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of December 1940, issued and subsequently served its complaint in this proceeding upon said respondent, Joseph Warner Furniture Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On January 2, 1941 the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into by and between counsel for the Commission and counsel for the respondent, subject to the approval of the Commission, whereby it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs or a report upon the evidence by the trial examiner. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted and made a part of the record, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding

is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Warner Furniture Corporation, 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 at 42 East Thirty-third Street (Two Park Avenue Building), city of New York, State of New York. Respondent is engaged in the sale and distribution of household furniture and conducts and operates so-called dealer or trade showrooms at said location under the name "Salem House." It designates and describes its business as "Exclusive Distributors of Salem House Furniture." When sales are made at said location, respondent causes the furniture sold to be transported from its said place of business in the State of New York to the purchasers thereof, many of whom are located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said furniture in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. There is a well-known preference on the part of a substantial portion of the public for purchasing at wholesale, due to a general belief, and the fact, that wholesale prices are substantially lower than retail prices.

PAR. 3. By various forms of advertising, circularizing, and by personal statements of its representatives and employees, respondent has directly and indirectly and by implication represented, and does represent, itself to be a wholesaler of furniture, and that it has been and is in fact selling furniture at wholesale prices.

As parts of respondent's plan and scheme so to represent the character of its business and the prices of its products, among other devices, acts, and practices, respondent circulated by mail and personally advertising matter, circular letters and so-called admittance permit cards, containing the following statements and claims:

(a) We are furniture distributors representing over 100 different factories. We stock every possible furniture need in a very wide price range to suit the requirements of thousands of dealers and interior decorators, and their referred clientele. A substantial money saving, quality for quality, is assured you.

(b)

ADMITTANCE PERMIT
To the Trade Showrooms of the
JOSEPH WARNER FURNITURE CORP.

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This Card entitles

and party to all Showroom privileges
including price quotation
EXCLUSIVE DISTRIBUTOR OF
SALEM HOUSE
FURNITURE.

(c) On the customer's copy of the triplicate invoice of sales appear the words "Serving The Trade."

(d) To persons and business concerns which, for a commission, would refer customers to respondent, respondent furnished circulars to be shown to the prospective customers, which read in part as follows:

"Salem House Authorized Member Admittance and direct buying privileges by permit or personal escort available here. On view, products of over 100 factories, 50,000 sq. ft. of furniture for every room in the home, in every price range. Substantial savings."

PAR. 4. As further parts of its said aforementioned plan to represent its business and prices as those of a wholesaler, and to more fully effectuate them, and to gain the advantages flowing therefrom, respondent carried on other acts and practices, among them the following:

(a) Respondent contacted various persons and smaller business concerns of various kinds and made agreements with them to pay, and did pay them commissions on sales to customers contacted by or sent to respondent by such persons and concerns, who, in making such contacts and inducing such prospective customers to go to respondent's place of business and purchase its wares, made or repeated to such customers some or all of the aforescribed misleading and deceptive statements.

(b) Its salesmen and representatives at its place of business hesitated or refused to show furniture to prospective purchasers unless they gave their dealer's name or presented a so-called admittance card from some person or concern with whom respondent had made an agreement as before described for the payment of commissions on sales made to such customers, and stated that "This house sold only to dealers and was strictly wholesale," and that the net prices quoted were in fact the wholesale prices quoted to dealers.

(c) To customers who came to its place of business, respondent's salesmen and representatives stated that the net prices for its furniture quoted to such customers were at various discounts and reductions from exaggerated prices marked on its furniture, and represented that such prices did in fact give the purchaser the benefit of discounts or reductions amounting to from 20 percent to as much as 60 percent below the ordinary retail prices of the same or similar wares, and were in fact wholesale prices.

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PAR. 5. By some or all of the aforesaid statements, acts, and practices, respondent, both directly and by indirection and implication, represented to, and induced the belief in, its customers that it was a wholesaler and that they were in fact buying from respondent at wholesale prices, when in truth and in fact respondent's sales were and are not at wholesale prices nor in wholesale lots, but were and are to the ultimate consumer and user and not for resale, and the net prices quoted to its customers were not wholesale prices, but were and are substantially higher than wholesale prices for the same or similar articles. Respondent does not sell said furniture at discounts or reductions from the ordinary retail prices of from 20 percent to 60 percent as represented.

The use by the respondent on said so-called admittance permits or cards and invoices of sales of the statements "Trade Showrooms," "Exclusive Distributor," "This Card entitles (Name of holder) and party to all Showroom privileges, including price quotation," and "Serving the Trade" has the tendency and capacity to lead members of the general public to believe that respondent sells only to or through dealers; that respondent is a wholesaler and sells to holders of such cards at wholesale prices; and that the business of respondent is something other than that of selling furniture and other merchandise to the general public.

PAR. 6. The aforesaid representations and implications made and published by respondent as aforesaid are false, misleading, and deceptive.

PAR. 7. The aforesaid acts, practices, and methods mislead and deceive purchasers into the belief that they are buying at wholesale prices; and the use of the aforesaid acts, practices and methods, in connection with the sale and distribution of respondent's said furniture in said commerce, has misled and deceived, and does mislead and deceive, purchasers into the erroneous and mistaken belief that respondent sells its said furniture at wholesale prices, and at the discounts or reductions from the usual retail prices indicated, and induces a substantial portion of the purchasing public, as a result of said erroneous and mistaken belief, to purchase respondent's said products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and a stipulation entered into by and between counsel for the Commission and counsel for the respondent, wherein it was stipulated and agreed that a statement of facts thereupon read into and made a part of the record in this proceeding may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs or of a report upon the evidence by the trial examiner, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Warner Furniture Corporation, a corporation, its officers, representatives, agent, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of furniture or allied merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent is a wholesaler or that it sells its furniture and other merchandise to purchasers thereof at wholesale prices.
2. Representing, directly or by implication, that respondent sells its furniture and merchandise only to or through dealers purchasing for resale.
3. Using and distributing among prospective customers so-called admittance permits or cards which, through use of such statements as "Trade Showrooms," "Exclusive Distributor," "Serving the Trade," "This card entitles (Name of holder) and party to all showroom privileges, including price quotation," or other similar statements, import and imply that respondent sells only to or through dealers; or that respondent is a wholesaler and sells to holders of such cards at wholesale prices; or that respondent's business is anything other than that of selling furniture and other merchandise to the general public.

It is further ordered, That the respondent shall, within 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.

IN THE MATTER OF

FOOD DISPLAY MACHINE CORPORATION, AND A. H. KULIKOWSKI, MRS. A. H. KULIKOWSKI, AND GEORGE H. HARDT

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

Docket 4122. Complaint, May 1, 1940—Decision, Sept. 23, 1941

Where a corporation and two individuals, who were its general officers and stockholders and in active charge of its business, engaged in interstate sale and distribution of machines designed for preparing and cooking potato chips, doughnuts, and, until discontinuance of sale of such machine in early 1940, corn chips, conducting their business under various trade names and doing much of their advertising under name of one of said individual officers; by advertisements in periodicals of general circulation, and advertising circulars, leaflets, and pamphlets, and circular letters, directly or by implication—

Represented that amazing profits or earnings might be made and fortunes acquired through the operation of their said machines, that profits of as much as \$21.60 and \$40 per day might be so obtained, and that the minimum profit on operation of certain machines would amount to \$100 a week;

Facts being earnings and profits so represented were far in excess of any amounts which had been earned by persons operating their machines, or which might reasonably be expected from operation thereof; in exceptional cases in which purchasers had been able to derive a profit from their operation, such profits were far below the amounts represented; and in no event could amazing profits or earnings be thus derived, or fortunes thus acquired;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that much greater earnings and profits might be made from the operation of their said machines than was actually the fact, and to cause it to purchase substantial quantities of their machines, as a result of such belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. William C. Reeves*, trial examiner.

Mr. R. P. Bellinger for the Commission.

Bussian & DeBolt, of Chicago, Ill., for respondents.

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 Food Display Ma-