

Complaint

IN THE MATTER OF

VANLEIGH FURNITURE CO., INC.

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

Docket 5260. Complaint, Dec. 9, 1944—Decision, Jan. 2, 1948

Where a corporation engaged in the sale and distribution of household furniture at its so called dealer or trade showrooms, which sold furniture to dealers for resale, to dealers and decorators who had brought or sent their customers to its place of business to select such merchandise, and direct to customer-users, with many purchasers in other states—

Represented through the designation "factory distributors", in connection with its corporate name, as displayed in letters, billheads, post cards and other advertising media, and on introductory or admittance cards distributed to retail furniture dealers and interior decorators for distribution to the purchasing public, and directly through statements of its salesmen to customers who came to its place of business, that it was a factory distributor of furniture and that the prices at which it sold furniture were factory or wholesale prices;

The facts being it was not a manufacturer of furniture and did not own or operate a factory; while it was a factory distributor for a certain manufacturer, it was not such a distributor for all the furniture it sold; its prices to purchaser-users were not factory or wholesale prices, but were higher than such prices; and said so called introductory or admittance cards for distribution to members of the purchasing public were not of value in the sense that they enabled the holders to buy its product for less than its customary prices;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that it was a factory distributor or wholesaler for all the furniture sold by it and that it sold to the consuming public at wholesale prices, and to induce a substantial portion of the purchasing public, with its well-known preference for purchasing directly from a factory or factory distributor or at wholesale by reason of the substantially lower factory and wholesale prices, to buy its said products:

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

Mr. Morton Nesmith for the Commission.

Davis & Heffner, 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 Vanleigh Furniture Co., Inc., a corporation, hereinafter referred to as respondent, has vio-

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lated the provisions of the 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, Vanleigh Furniture Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 115 West Fortieth Street, in the 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 Vanleigh Furniture Co., Inc. It designates and describes its business as "Factory Distributors." 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 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. 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 now represent, itself to be a wholesaler of furniture and that it has been, and is in fact, selling furniture to the consumer-user purchaser at wholesale prices.

As part 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 distributed through its agents and representatives advertising matter, circulars, letters, and so-called introductory or admittance permit cards and price tags placed on its merchandise when sold, listing fictitious prices far in excess of the retail prices of such merchandise. From these fictitious prices respondent gave the purchaser users of said products a discount and represented the differences between the

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fictitious prices and the discounts to be special, reduced, or wholesale prices. Among and typical of such statements and claims are introductory or admittance cards, distributed to retail dealers and interior decorators for distribution to the purchasing public, as follows:

Your introduction to a beautiful display of fine furniture.

M-----

Dealer -----

Address-----

Vanleigh Furniture Company, Inc.

Furniture Distributors.

PAR. 4. As further parts of its said afore-mentioned plan and scheme, respondent, directly or by inference, represents its business and prices to the consumer-purchaser as those of a wholesaler, and to more fully effectuate said plans and schemes and to gain the advantages flowing therefrom, respondent carries 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 aforesaid 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 and paid commissions on sales to such dealer customers.

(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 various discounts or reductions from exaggerated prices marked on its furniture and did in fact give the purchaser the benefit of their reductions amounting to various percentages of discount below the prices marked on said products.

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 consumer-user purchasers 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 said sales were

and are not at wholesale prices, but were and are to the ultimate consumer and user and not for resale, and were so intended and known to the respondent, and the net prices quoted to its said 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 to the individual purchaser-user at discounts or reductions from the ordinary retail prices as represented, and said prices less the discounts represent and are the regular and usual prices at which respondent sells its said products in the regular and usual course of business.

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 commerce has misled and deceived and does mislead and deceive purchasers into the erroneous and mistaken belief that respondent sells its said furniture to the consuming public at wholesale prices, and at discounts or reductions from the usual retail prices indicated, and induces the 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 respondent, as alleged herein, 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 December 9, 1944, issued and subsequently served its complaint in this proceeding upon respondent, Vanleigh Furniture Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed its answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent and Daniel J. Murphy, assistant chief trial counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of or in opposition to the charges stated in the complaint, and that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, including

inferences which it may draw from said stipulated facts and its conclusion based thereon, and enter its order disposing of the proceeding without intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; 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 this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Vanleigh Furniture Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 115 West Fortieth Street, New York, N. Y. It is engaged in the sale and distribution of household furniture and has so-called dealer or trade showrooms at the aforesaid address under the name Vanleigh Furniture Co., Inc. It designates and describes its business as "Factory Distributors."

PAR. 2. In the course and conduct of the aforesaid business, respondent causes said furniture, when sold, to be transported from its aforesaid place of business to 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, and respondent maintains, and at all times mentioned herein has maintained, a course of trade in said furniture in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. In carrying on its said business and for the purpose of inducing the purchase of its furniture, respondent has made, and makes, various statements and representations in advertisements published and circulated by the United States mails and otherwise among dealers and to purchaser-users, and by personal statements of its salesmen to customers coming into its place of business. Among and typical but not all-inclusive of such statements and representations are letters, billheads, post cards, and other advertising media bearing the name and designation:

VANLEIGH FURNITURE COMPANY, INC.
FACTORY DISTRIBUTORS

Also introductory or admittance cards distributed to retail furniture dealers and interior decorators for distribution to the purchasing public, which cards bear the following:

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Your introduction to a beautiful display of fine furniture.

M.....

Dealer.....

Address.....

Vanleigh Furniture Company, Inc.

Factory Distributors.

PAR. 4. By means of the aforesaid statements, respondent represents, directly and by implication, that it is a factory distributor of furniture and that the prices at which it sells furniture are factory or wholesale prices. Such representations are false, exaggerated, and misleading. In truth and in fact, respondent is not a manufacturer of furniture and does not own or operate a factory, and is not a factory distributor for all the furniture which it sells. Respondent was factory distributor for Landstrom Furniture Co. of Rockford, Ill., but also sold other furniture which it purchased from other manufacturers for which it was not a factory distributor. Respondent sells some furniture to dealers for resale; it sells some furniture to dealers and decorators who have brought or sent their customers to its place of business to select such merchandise; and it sells some furniture direct to customer users and not for resale. In the case of furniture selected by customers of retail dealers and interior decorators, the prices quoted are those determined by respondent's showroom prices plus the percentage of profit the dealer or decorator desires added. In the case of sales made to purchaser-users, respondent's prices are not factory or wholesale prices and are higher than such prices. The so-called introductory or admittance cards distributed to retail furniture dealers and interior decorators for distribution to members of the purchasing public are not, and never have been, of value in the sense that they enabled the holders thereof to buy respondent's product for less than the prices customarily charged therefor by respondent.

PAR. 5. There is a well-known preference on the part of a substantial portion of the public for purchasing furniture or other commodities directly from a factory or factory distributor or at wholesale, due to the general belief and the fact that factory and wholesale prices are substantially lower than retail prices.

PAR. 6. The acts and practices of respondent as aforesaid have had, and have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that respondent is a factory distributor or wholesaler for all the furniture it sells, and into the belief that respondent sells its said furniture to the consuming public at wholesale prices, and to induce a substantial

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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 respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between respondent herein and Daniel J. Murphy, assistant chief trial counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon respondent herein its findings as to the facts and conclusion based thereon and an order disposing of this proceeding, 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 respondent, Vanleigh Furniture Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other devise, in connection with the offering for sale, sale, or distribution of furniture in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "factory distributor," or any other word or words of similar import, in such a manner as to represent or imply that respondent is a factory distributor or wholesaler of furniture for which respondent is not in fact factory distributor or wholesaler.

2. Representing, directly or by implication, that prices for furniture which are higher than factory or wholesale prices for such furniture are factory or wholesale prices.

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.

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IN THE MATTER OF

NEW ENGLAND FISH CO., ALVAH L. HAGER, DAVID F.
CHOATE, JAMES S. ECKMAN, HARALD SYNNESTVEDT,
AND WILLIAM J. RICH