

Syllabus

IN THE MATTER OF

DAVID TEITELBAUM ET AL. DOING BUSINESS AS
UNITED STATES STATIONERY COMPANY

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

Docket 5930. Complaint, Oct. 11, 1951—Decision, Jan. 3, 1953

Where four partners engaged in the interstate sale and distribution of storage and filing cabinets and other merchandise—

- (a) Represented in advertising circulars of interstate circulation that steel storage cabinets depicted were regularly sold by them for \$69 and that the price had been reduced to \$29.95;

Notwithstanding the fact that the cabinets were regularly sold for \$29.95; while they did at one time sell a different size "all-steel" cabinet for \$69, there was no showing that said price was ever applicable to the smaller cabinet advertised;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and with effect of causing it to purchase substantial quantities of such merchandise; and

- (b) Adopted and used the name "National Credit Service Company, 1-3 West 15th Street, New York 11, New York" for the purpose of enforcing payments allegedly due them for shipments of goods, both authorized and unauthorized, and through the use of such name and address, and by correspondence, directly and indirectly represented it to be a bona fide collection agency in no way connected with them, and through use thereof employed various methods of intimidation and harassment to induce consignees of their merchandise to make payment therefor;

The facts being that the "National Credit Service Company" was merely a trade-name registered in the New York County Clerk's office and adopted and used by two of said partners only in connection with unpaid accounts due to said United States Stationery Company and to other companies in which they were interested;

With tendency and capacity to mislead and deceive persons to whom respondents' merchandise had been consigned, and with effect of causing such persons to pay respondents sums of money which they were not obligated to pay:

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.

Respondents' representation that "complete steel filing system" cabinets were sold by them for \$39.95 as a regular item and that the \$33.95 price constituted a reduction or a special offer, was borne out by reliable, probative and substantial evidence, and was therefore accepted as true.

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Where respondents shipped merchandise to consignees without having received bona fide orders therefor, and collected the price thereof: it appeared that no shipment was made unless they had in their possession an order card bearing a name and address, that such names were sometimes affixed without authorization by persons other than those whose names were on the cards so that the orders were not bona fide, that in such cases until complaint was made, the consignor was not able to anticipate such an occurrence, and that such shipments did not appear to be greater than would normally be expected in the direct-by-mail type of operation conducted by them, and that reliable, probative and substantial evidence in the record did not show that they made a practice of shipping merchandise without having received an order.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Jesse D. Kash and *Mr. L. J. Farnsworth* for the Commission.
Ruth Gottdiener, of New York City, 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 David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut, and Arthur Fingerhut, copartners doing business as United States Stationery Company, hereinafter referred to as respondents, have violated 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. Respondents David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut, and Arthur Fingerhut are copartners doing business under the name and style of the United States Stationery Company with their principal office and place of business at 100 Fifth Avenue, New York, New York.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of filing cabinets, office desks, luggage, office equipment and other merchandise. The respondents cause and have caused their said merchandise when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, located in various States of the United States and in the District of Columbia.

PAR. 3. Respondents maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. The volume of their business in said commerce has been and is substantial.

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PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said merchandise, respondents have printed and circulated throughout the several States to prospective customers, many advertising circulars containing among other things the following statements:

Drastic reduction
Heavy gage steel extra large
"Safe Type" storage cabinet
* * *
\$69.00
Only \$29.95
Complete Steel Filing System
Letter and legal size
* * *
\$39.95
Sensational value
\$33.95 F. O. B. N. Y.

The said advertising circulars carry a pictorial representation of the merchandise offered for sale, and the bottom portion of the circular is an order blank to be detached and filled in as desired by the purchaser.

PAR. 5. Through the use of aforesaid statements and others of the same import but not specifically set out herein, respondents represent that the depicted steel storage cabinets and steel filing cabinets are regularly sold by them for \$69.00 and \$39.95, respectively, and that the price has been reduced to \$29.95 and \$33.95, respectively.

PAR. 6. The foregoing representations are false, misleading, and deceptive. In truth and in fact, respondents do not sell and have not sold said steel storage cabinets and steel filing cabinets for \$69.00 and \$39.95, respectively. Respondents' usual and regular price for said products was and is \$29.95 and \$33.95, respectively.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were and are true and has caused and now causes a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase substantial quantities of respondents' merchandise.

PAR. 8. In the course and conduct of their business as aforesaid, respondents have made a practice of shipping merchandise to individuals, partnerships, and corporations without having received an order therefor, and then seeking to exact payment for said unordered mer-

chandise through repeated "demand letters" and by threatening legal action to collect for said merchandise.

PAR. 9. In the course and conduct of their business and for the purpose of enforcing payments allegedly due them for shipments of their goods both authorized and unauthorized, respondents have adopted and used the name "National Credit Service Company," and by the use of such name, and by letter, and fictitious addresses and notices, have represented it to be a bona fide collection agency in no way connected with respondents. Under this guise respondents employ various methods of intimidation and harassment to induce consignees of respondents' merchandise to make payment therefor, whether said consignees had ordered the merchandise or not.

PAR. 10. The said representations were false. In truth or in fact, "National Credit Service Company" was not a bona fide collection agency nor was it independent of and distinct from respondents but was a trade name used by respondents as a front for making and enforcing collections as herein set forth.

PAR. 11. The use of the name "National Credit Service Company" and the practices aforesaid, by respondents, has had the tendency and capacity to mislead and deceive persons to whom respondents' merchandise has been consigned, with respect to the nature of "National Credit Service Company" and its relation to respondents, and by reason thereof to pay to respondents sums of money which they were not obligated to pay because of the unauthorized shipment of merchandise and because merchandise was purchased as the result of respondents' deceptive practices, as herein alleged.

PAR. 12. The aforesaid acts and practices of respondents, 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.

DECISION OF THE COMMISSION

Pursuant to Rules XXII and XXIII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated January 3, 1953, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.¹

¹ Said "Decision", etc., dated January 22, 1953, reads as follows, omitting the formal Order of Compliance, set forth *infra* at page 753:

The initial decision of the hearing examiner having been filed in this proceeding on November 21, 1952, and counsel for respondents having seasonably filed a notice of respondents' intention to appeal therefrom; and

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 11, 1951, issued and subsequently served its complaint in this proceeding upon the respondents David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut and Arthur Fingerhut, copartners doing business as United States Stationery Company, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested, and said hearing examiner having duly considered the record herein finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut, and Arthur Fingerhut are copartners doing business under the name and style of the United States Stationery Company with their principal office and place of business at 100 Fifth Avenue, New York, New York, in a building at the corner of Fifth Avenue and 15th Street with entrances also at 1-3 West 15th Street.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of storage and filing cabinets and other merchandise. The respondents cause and have caused their said merchandise when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, located in various States of the United States and in the District of Columbia.

No appeal brief having been filed within the time provided by the Commission's Rules of Practice and, therefore, no matters having been presented for determination by the Commission on appeal:

Therefore, pursuant to Rules XXII and XXIII of the Commission's Rules of Practice, the initial decision of the hearing examiner, a copy of which is hereto attached, did on January 3, 1953, become the decision of the Commission.

Findings

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PAR. 3. Respondents maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce between and among the various States of the United States and in the District of Columbia. The volume of their business in said commerce has been and is substantial; more than 125,000 customers are served annually.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their said merchandise, respondents have printed and circulated throughout the several states to prospective customers, many advertising circulars containing, among other things, the following statements:

Drastic Reduction
Heavy Gauge Steel—Extra Large
"SAFE TYPE" STORAGE CABINET

* * *

~~\$69.00~~ only \$29.95

In conjunction with the above quoted language, there is a pictorial representation of a 2 door, 4-shelf cabinet, described as having the following dimensions: Width 36", Height 72", Depth 18", and Weight 145 pounds.

Complete Steel Filing System
Letter and Legal Size

* * *

SENSATIONAL VALUE

\$39.95 \$33.95

In conjunction with the above quoted language there is a pictorial representation of a cabinet containing two letter size filing drawers, two card filing drawers, and a 2-shelf storage compartment.

PAR. 5. Through the use of aforesaid statements and others of the same import but not specifically set out herein, respondents represent that the depicted steel storage cabinets and steel filing cabinets are regularly sold by them for \$69.00 and \$39.95, respectively, and that the price has been reduced to \$29.95 and \$33.95, respectively.

PAR. 6. The foregoing representations that steel storage cabinets as depicted and described above, each being 36" by 72" by 18" and weighing 145 pounds, were regularly sold on the market or by respondents for \$69.00 and that the price had been reduced to \$29.95, are false, misleading and deceptive. From 1949 up to the date of the hearing respondents, in the regular course and conduct of their business, offered for sale through their circulars and sold the cabinets described above for \$29.95. The reliable, probative and substantial evidence in the record establishes the fact that the usual and customary price for these cabinets was and is \$29.95.

The record does support a finding that the respondents did at some time sell an "all steel" storage cabinet, 36" wide, 18½" deep, 76" high, weighing 200 pounds, for \$69.00 but there is no showing that this price was ever applicable to the 72", 145-pound cabinet described above nor that the price of the 200-pound cabinet was ever reduced to \$29.95.

The representations that "complete steel filing system" cabinets, each containing two letter size filing drawers, two card filing drawers, and a 2-shelf storage compartment, were sold by the respondents for \$39.95 as a regular item and that the \$33.95 price constituted a reduction or special offer are borne out by reliable, probative and substantial evidence in the record, and must be accepted as true.

PAR. 7. The use by the respondents of the statements and representations hereinabove found to be false, misleading and deceptive had and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were and are true and has caused and now causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' merchandise.

PAR. 8. In the course and conduct of their said business, respondents have shipped merchandise to consignees thereof without having received bona fide orders therefor, and have collected or attempted to collect the price thereof. However, the record shows that no shipment of merchandise was made by respondents unless they had in their possession an order card bearing a name and address. Such names had sometimes been affixed without authorization by persons other than those whose names were on the cards and the orders were therefore not bona fide. In such instances, the consignee was not able to anticipate receipt of any merchandise from the respondents who would know of such mis-shipment only when complaint was made.

The occurrence of mis-shipments does not appear to be greater than would normally be expected in the direct-by-mail type of operation conducted by respondents and the reliable, probative and substantial evidence in the record does not show that the respondents have made a practice of shipping merchandise to individuals or firms without having received an order.

PAR. 9. In the course and conduct of their business and for the purpose of enforcing payments allegedly due them for shipments of their goods, both authorized and unauthorized, respondents have adopted and used the name National Credit Service Company, 1-3 West 15th Street, New York 11, New York, and, through the use of such name and address, and by correspondence, have directly and in-

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directly represented it to be a bona fide collection agency in no way connected with respondents and through its use have employed various methods of intimidation and harassment to induce consignees of respondents' merchandise to make payment therefor.

PAR. 10. The said representations were and are false and misleading. The National Credit Service Company is a trade name registered in the New York County Clerk's Office, adopted by the respondents David Teitelbaum and Samuel Fingerhut, as partners, and used by them only in connection with unpaid accounts due the United States Stationery Company and other companies in which the said David Teitelbaum and Samuel Fingerhut are interested. It is not independent of and distinct from respondents and is not a bona fide collection agency.

PAR. 11. The use by respondents of the name National Credit Service Company together with the practices aforesaid, had and has the tendency and capacity to mislead and deceive persons to whom respondents' merchandise has been consigned as to the nature of National Credit Service Company and its relation to respondents, and by reason thereof, to pay to respondents sums of money which they were not obligated to pay.

CONCLUSION

The aforesaid acts and practices of respondents found herein to be false and misleading 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

It is ordered, That respondents David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut, and Arthur Fingerhut, individually and as copartners doing business as United States Stationery Company, or under any other name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale, offering for sale, or the distribution of steel filing cabinets, steel storage cabinets or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as the customary or usual price or value of said merchandise any price or value which is in excess of the price at which said merchandise is customarily offered for sale and sold in the usual course of business.
2. Representing, directly or by implication, that National Credit Service Company, or any other trade or fictitious name under which a

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similar business is done by respondents, is a bona fide collection agency not connected with respondents.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, David Teitelbaum, William Teitelbaum, Carl Teitelbaum, Samuel Fingerhut, and Arthur Fingerhut, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order contained in said decision [as required by said decision and order of January 3, 1953].

Complaint

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IN THE MATTER OF
LOMA DRESS CORPORATION

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

Docket 5980. Complaint, Apr. 25, 1952—Decision, Jan. 3, 1953

Products manufactured from silk, the product of the cocoon of the silkworm, have for many years been held, and are still held, in great public esteem because of their outstanding qualities, and there has been for many years, and still is, a public demand for such products.

Garments manufactured from fabrics composed of rayon, and of rayon and other fibers, may have the appearance and feel of silk, and many members of the purchasing public are unable to distinguish between such garments and garments manufactured from silk. Consequently, such garments are accepted by many members of the purchasing public as silk products.

Where a corporation engaged in the manufacture and interstate sale and distribution to retailers of garments made from rayon fabrics—

Misleadingly offered and sold garments which were composed wholly or in part of rayon and simulated in texture and appearance those composed wholly or in part of silk without informing the purchasing public that such garments were rayon and not silk;

With the result that members of the purchasing public might have been led to believe that said garments were composed wholly or in part of silk, and with capacity and tendency to mislead them as to fiber content:

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.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. George E. Steinmetz for the Commission.

Phillips, Nizer, Benjamin & Krim, 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 Loma Dress Corporation, a 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 will be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: