

a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
CURTIS BROTHERS, INC., ET AL.

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

Docket 7411. Complaint, Feb. 16, 1959—Decision, Dec. 23, 1959

Order requiring Washington, D.C., furniture dealers to cease representing falsely in advertising that excessive fictitious prices were their usual retail prices, and to cease misrepresenting the amount of savings available to purchasers at purportedly reduced prices.

Mr. Frederick McManus for the Commission.

Mr. Harry E. Taylor, Jr., of *Taylor and Waldron*, of Washington, D.C., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

PRELIMINARY STATEMENT

The Commission issued its formal complaint in this case on February 16, 1959, against the respondent Curtis Brothers, Inc., a retail furniture dealer, and its officers, charging them with a violation of Section 5 of the Federal Trade Commission Act by use of certain false, misleading and deceptive statements and representations in advertisements concerning the prices at which their furniture is offered for sale and the savings which would result in the purchase of the furniture described in said advertisements.

The respondent corporation in its answer denied that it intended to convey to the public that its use of the word "regular" meant "usual"; that it intended to show the price the furniture could be sold for if the regular markup was applied to the article advertised; that the savings represented in the advertisement were the difference between the sale price and the price that the purchaser would have paid if the regular markup had been applied to the item. Not only did the respondent corporation in its answer deny the allegations of the complaint, it also attacked the Federal Trade Commission's activities in the issuance of "Guides Against Deceptive Pricing," adopted October 2, 1958, alleging that the Commission

Decision

56 F.T.C.

arbitrarily and capriciously defined said terms and regulated said practices in a manner which is confounding and confusing to both business and the public and clear only to certain specialized personnel within the Federal Trade Commission. Both business and the public have over the years taken into consideration the fact that advertising claims are advertising claims and not scripture and purchasers investigate and shop subsequent to exposure to such claims and when an individual buys he knows what he buys and what he pays and the purchasing public is not the dumb animal characterized by the policy of the Federal Trade Commission in its complaints, regulations and "Guides Against Deceptive Pricing." The fact that such members of the public as the Federal Trade Commission seeks to protect can read the advertising of respondent and others demonstrates that they are not so ignorant of the facts of life that without the assistance of the Federal Trade Commission they will be unable to make the usual purchases of furniture and other equipment without suffering injury or prejudice. The overprotective, overregulatory, arbitrary and capricious approach made by the Federal Trade Commission in the field of advertising by highly competitive retail businesses will ultimately result in producing a race of idiot consumers or purchaser who will be at the mercy of merchants in every country except America and it is unfair to the tourist American to provide a purchaser's utopia in this country that will leave him unprepared to purchase commodities or do business any where else in the world. It would be much better to educate the consumer than to destroy the established practices that have developed through the years in the various trades and businesses especially since the public, business men and everyone concerned knows the practices and accepts the same as part of the American way of life.

It is further contended by respondent corporation in its answer:

As advertising is now conducted by all of respondent's competitors to prevent advertising such as described in Paragraph Four of the Complaint would create rather than eliminate unfair competition by forcing respondent to compete with others who are able to continue to advertise in the manner forbidden to respondent. This is analogous to tying a boxer's hands behind his back and pushing him into a ring where an opponent has both hands free and instructing the hand tied fighter to "get in there and fight!" The Congressional intent of the Act cannot be under these circumstances to create an unfair competitive situation that may well destroy the respondent, an employer of many people and a substantial taxpayer.

It is finally contended by respondent corporation that it has been unfairly injured and placed at a serious disadvantage in competition by virtue of the publicity given the filing of the Complaint herein and the respondent has been prejudiced and injured as a result of the charges contained in the Complaint, and the Federal Trade Commission has by its conduct in publicizing its charges created unfair competition, a result not contemplated by Congress in the passage of the Federal Trade Act and the amendments thereto.

Testimony was taken before the hearing examiner in support of the allegations of the complaint and in opposition thereto. Pro-

posed findings of fact and conclusions have been submitted by both counsel in support of the complaint and counsel for the respondents. This proceeding is now before the hearing examiner for final disposition upon the complaint, answer, testimony, both oral and written, and proposed findings of fact and conclusions, to which the hearing examiner has given consideration. All findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected. The hearing examiner, having considered the record herein and now being duly advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Curtis Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal place of business located at 2041 Nichols Avenue, S.E., Washington, D.C. Respondents George T. Curtis, Harry H. Curtis, Arthur B. Curtis and Charles W. Curtis are officers of said corporate respondent and, as such, formulate, direct and control the acts, practices and policies of the corporate respondent, with the exception that respondent Charles W. Curtis, secretary and general manager, is in sole charge and formulates, directs and controls the respondent corporation's policies, acts and practices relating to all forms of advertising.

2. Respondents are now, and since 1938 have been, engaged in the retail furniture business and in the regular and usual course and conduct of this business have caused the furniture offered for sale to be advertised in local newspapers published in Washington, D.C., and in nearby Maryland, and has caused said furniture, when sold, to be delivered from respondents' place of business to the purchasers thereof within the Washington metropolitan area in the District of Columbia and the States of Virginia and Maryland, and at all times herein mentioned have maintained a substantial course of trade in furniture in commerce, as "commerce" is defined in the Federal Trade Commission Act, in competition with other retail furniture dealers located in the City of Washington, D.C.

3. In the course and conduct of their said business and for the purpose of inducing the sale of their said furniture, respondents made the following statements in advertisements in Washington, D.C., newspapers in January, April and June 1958 concerning the prices at which their dining room and bedroom furniture, respectively, were offered for sale to the purchasing public:

Findings

56 F.T.C.

(a) As to dining room furniture:

The "Valencia" Group	
You Save \$80	
Table	
and	
Four chairs	\$129
Buffet \$79.95	China \$99.95
(April 1958)	
Correlated Dining Room Group	
You Save \$100.00	
Junior Extension Table -----	\$65.00
Senior Extension Table -----	79.95
Round Table -----	89.95
Dropleaf Table -----	119.95
Junior Buffet -----	79.95
Senior Buffet -----	99.95
Junior China -----	99.95
Breakfront China -----	139.95
Arm Chair -----	19.95
Side Chair -----	16.50
(June 1958)	

(b) As to bedroom furniture:

You save \$80!	
Beautiful Starfire	
Mahogany Suite	
Double Dresser	
Tilting Mirror	
& Bookcase Bed \$129	
Chest \$44.95	Night Table \$27.95
(January 1958)	
Bassett's "Starfire" Suite	
Double Dresser	You
Tilting Mirror &	Save
Bookcase Bed \$119	\$80
Chest \$44.95	Night Table \$27.95
(June 1958)	

4. All the furniture described in the foregoing paragraph was purchased by respondents from the Bassett Furniture Company, Bassett, Virginia. A part of the Valencia Group, consisting of a table and four chairs, when sold in combination, was usually sold at the sale price of \$129. It consisted of a junior extension table, Catalog No. 446, which cost \$36.75 and regularly sold for \$69.95; four side chairs, Catalog No. 445, which cost \$8.40 each and regularly sold for \$16.95 each or a total combined regular price of \$137.75. The buffet and china cabinet mentioned in the advertisement as a part of this group at a sale price of \$79.95 for the buffet and \$99.95 for the china cabinet were Catalog No. 446. The buffet

cost \$43 and regularly sold for \$89.95 and the china cabinet cost \$49 and regularly sold for \$99.95. Comparing the regular selling prices of all items in the group with the sale prices, there is a total saving of \$18.75—\$8.75 on the table and four chairs and \$10 on the buffet, there being no difference between the sale price and regular price on the china cabinet. The "regular" prices mentioned herein are taken from invoices of the furniture actually sold during the period January through June of 1958. It was contended by respondent Charles W. Curtis, who testified in this case, that the regular price for the five-piece group, table and four chairs, was \$169.95 but his testimony was not supported by the invoices in the record. Likewise, his testimony that the regular price for the buffet was \$119.95 was not supported by the invoices in the record. No sales of these items were made at these prices during the first six months of 1958.

In this connection it appears from the testimony of Mr. Curtis that his definition of the word "regular," when used in pricing dining room furniture, referred to a fictitious price resulting from a computation of invoice cost, plus 10 percent allowance for freight, plus 100 percent margin and a 5 percent pad or service charge, which price however was never actually charged for the respective items in the Bassett line of dining room furniture in ordinary sales. Practically all the sales of the Bassett lines of dining room furniture, as well as the bedroom furniture, were at the advertised sale prices.

5. With respect to the advertisement of the Correlated Dining Room Group in June 1958, the following table sets forth the comparison of the regular prices and the sale prices of the various items making up the group.

	Sale price	Regular price	Saving
Junior extension table.....	\$65.00	\$69.95	\$4.95
Senior extension table.....	79.95	79.95	
Round table.....	89.95	95.00	5.05
Dropleaf table.....	119.95	119.95	
Junior buffet.....	79.95	89.95	10.00
Senior buffet.....	99.95	99.95	
Junior china.....	99.95	99.95	
Breakfront china.....	139.95	179.95	40.00
Arm chair.....	19.95	19.95	
Side chair.....	16.50	16.95	.45
Total saving.....			\$60.45

¹ One sale at \$97.95 made on May 15, 1958.

A comparison of the regular and sale prices of the Correlated Dining Room Group indicates that a purchaser of the entire group could not save more than \$60 and that with respect to many of the items, there would be no saving whatever.

6. The Starfire Bedroom Suite advertised by respondents con-

Findings

56 F.T.C.

tained a bookcase bed, Bassett Catalog No. 814½, which cost \$25 and sold at a regular price of \$49.50, although there was one sale at \$50. Most of the sales, however, during the six-month period were at \$44.50, the sale price. The dresser in the advertisement was Bassett Catalog No. 811. It cost \$42.70 and sold at the regular price of \$79.50, although many sales were at \$74.50. The combined regular price of the bookcase bed and the dresser in the January advertisement was \$129 and in the June advertisement was \$119. The chest in both advertisements is Bassett Catalog No. 810. It cost \$22.75 and regularly sold for \$44.95, although there was one sale in March 1958 at \$49.95. The night table displayed in both advertisements, Bassett Catalog No. 810, cost \$14.75 and sold regularly at \$27.95, although there was one sale in February 1958 at \$29.95. The representation that a purchaser saves \$80 on a purchase of the Starfire Bedroom Suite is not supported by a comparison of the regular and sale prices of the items in the group as most of the sales of this group were at the sale price. In the June advertisement there would be a saving of \$10. The testimony of Mr. Curtis that the bookcase bed regularly sold for \$69.95 and the chest for \$54.95 is not supported by the invoices as there were no sales of those articles at those prices during the six-month period.

RULINGS ON PROPOSED FINDINGS OF RESPONDENTS

With respect to the proposed findings of the respondents that the advertising of respondents represented the savings to be the difference between respondents' price and the price charged by some of respondents' competitors or the price at which the furniture could be sold by respondents if the regular markup used by respondents was applied to the furniture described in the advertisements in the record, it is found that this contention is not supported by competent evidence and, furthermore, does not constitute a good defense in this proceeding. One competing retail dealer testified that the sale prices at which respondents sold Bassett furniture were the minimum prices suggested by Bassett. He further testified that he would not say that his regular price on the group was \$80 more than his sale price. Another competing retail dealer testified that the Bassett suggested minimum retail price was about 80 percent above cost. This dealer did testify that he had seen the Bassett line sold at higher prices than by Curtis but he did not testify as to where such sales had been made and no further testimony was offered to support his statement. The charge in the complaint which must be met by respondents is that the savings that the purchaser will realize in the purchase of the furniture advertised refers to the regular or usual

prices at which respondents sell the furniture described in the advertisement. There is no charge in the complaint with respect to prices on such furniture by competitors.

Other proposed findings of the respondents which are rejected as being irrelevant and immaterial are as follows:

(a) that there is no evidence that any member of the public ever made a purchase as a result of the advertising which is the subject of the complaint;

(b) that there is no evidence that members of the public purchasing furniture were motivated by comparative prices;

(c) that respondents discontinued the use of comparative prices as soon as they became aware of the Commission's policy concerning the use of the word "regular"; and

(d) that respondents' reputation has been damaged by the publicity attending the issuance of the Commission's complaint.

With respect to the discontinuance by respondents of the use of comparative prices, it appears from the testimony of Mr. Curtis that a change was made in the advertisements of the respondents following the call of the Commission's investigator, but it is quite apparent, not only from the testimony of Mr. Curtis, but also from the contentions of respondents in their proposed findings with respect to the interpretation of the word "regular" as used by the respondents, that the Commission would not be justified in dismissing the case because the practice had been discontinued. Although the respondent is a well-known and entirely reliable furniture dealer, some of its competitors, equally reliable, have entered into consent agreements with the Commission and are now operating under orders requiring them to cease and desist from the practices covered in this complaint. It would not be fair to such competitors for the Commission to dismiss the complaint in this proceeding.

CONCLUSION

The use by respondents of the foregoing false, misleading and deceptive statements in their advertisements, with respect to the savings the purchasers of the furniture will receive, has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements were and are true, and into the purchase of substantial quantities of respondents' furniture by reason of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has thereby been and is being done to competition in commerce.

Order

56 F.T.C.

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. This case is controlled by a recent decision of the Commission in *Kay Jewelry Stores, Inc.*, Docket No. 6445, in which the Commission entered an order requiring the respondents therein to cease and desist from advertising or representing that any savings are afforded to purchasers of respondents' merchandise in excess of those actually afforded. The following decisions of the Commission: *Rudin & Roth*, Docket No. 6419; *The Orloff Company, Inc.*, Docket No. 6184; and the *American Broadloom Carpet Company*, Docket No. 6271, are also authorities for the proposition that fictitious pricing by either a manufacturer or a retail dealer constitute an unfair and deceptive practice and an unfair method of competition.

In view of the testimony in this case that respondent Charles W. Curtis is General Manager and in charge of all advertising and that the other individual officers named in the complaint have nothing to do with advertising, it is believed that the complaint in this matter should be dismissed as to the other officers as individuals. An order against the respondent corporation and its officers and against Charles W. Curtis, individually and as an officer of the corporation, is sufficient to prevent a recurrence of the practices covered by the complaint.

ORDER

It is ordered, That respondents Curtis Brothers, Inc., a corporation, and its officers, and Charles W. Curtis, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, 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:

A. Representing, directly or by implication:

1. That any amount is the regular retail price of respondents' merchandise when such amount is in excess of the price at which said merchandise was regularly sold at retail by respondents in the recent normal course of their business.
2. That any savings are afforded in the purchase of respondents' merchandise unless the prices at which it is offered constitute a reduction from the prices at which said merchandise was regularly and customarily sold by respondents in the recent normal course of their business.

Syllabus

B. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amount by which the price of said merchandise is reduced from the price at which said merchandise was regularly and customarily sold by respondents in the recent normal course of their business.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to George T. Curtis, Harry H. Curtis and Arthur B. Curtis in their individual capacities but not in their capacities as officers of respondent Curtis Brothers, Inc., a corporation.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 23rd day of December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Curtis Brothers, Inc., a corporation, and its officers, and Charles W. Curtis, individually and as an officer of said corporation, 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 to cease and desist.
