

It is ordered, That respondents Rein, Rame & Gurvitch, Inc., a corporation, and Abe W. Rein, Jack Rame, and Nathan Gurvitch, individually and as officers 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.

IN THE MATTER OF
DISCOUNT FAIR, INC., ET AL.

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

Docket 7534. Complaint, July 13, 1959—Decision, Jan. 30, 1960

Order requiring sellers in Washington, D.C., to cease representing falsely—in newspaper advertisements and otherwise—that excessive fictitious prices were the customary retail prices at which they sold portable television sets and refrigerators, and that purchasers would realize a saving of the difference between the said higher and lower prices.

Mr. Edward F. Downs for the Commission.

No appearance by or for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission on July 27, 1959 issued its complaint herein, charging respondents with having violated the provisions of the Federal Trade Commission Act. Respondents, except for George Feldman, were duly served with process. As to George Feldman, the complaint was returned by the Post Office Department with a notation that the addressee was deceased.

No answer to the complaint was filed, and on October 29, 1959 a hearing was held in Washington, D.C., at which no appearance was made by or for the respondents. At said hearing counsel supporting the complaint moved to dismiss the complaint as to George Feldman by reason of failure of service. The term "respondents" as hereinafter used, therefore, does not include George Feldman.

Under Section 3.7(b) of the Rules of Practice, Procedure and Organization of the Federal Trade Commission, a hearing was conducted to determine the form of the order. The hearing examiner finds that respondents herein are now in default; that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; and that the complaint states a legal cause of action under the Federal Trade Commission Act.

FINDINGS OF FACT

1. Respondent Discount Fair, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business at 721 11th Street, N.W., Washington, D.C.

Respondents Joseph George Goldberg and Dorothy Goldberg are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of household appliances to the consuming public.

3. In the course and conduct of their business respondents now sell and deliver, and have sold and delivered, their said merchandise to the purchaser thereof in the District of Columbia and also cause, and have caused, their said merchandise, when sold, to be shipped from their place of business in the District of Columbia to purchasers thereof located in states adjacent to the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise respondents have made certain statements in advertisements published in newspapers which are circulated in the District of Columbia and across state lines. Among and typical, but not all inclusive of such statements and representations so made are the following:

Reg. 169.95 17" Portable * * * TV \$99

419.95 * * * AUTO. 12 cu. ft. Refrigerator \$188

5. Respondents through the use of the aforesaid statements, and others of similar import, not specifically set out herein, represented, directly or by implication, that the higher stated prices are the usual and customary retail prices charged by respondents in the recent,

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regular course of business, and that they have reduced their retail prices from the stated higher prices to the stated lower prices and that therefore purchasers of the merchandise so advertised realize a saving of the difference between the said higher and lower prices.

6. The statements and representations, as hereinabove set forth, are false, misleading and deceptive. The higher prices appearing in respondents' advertisements are fictitious and in excess of the usual and customary retail prices charged by respondents in the recent, regular course of their business and respondents have not reduced their retail prices from the stated higher prices to the stated lower prices. Therefore, the purchasers of respondents' merchandise do not realize a saving of the difference between the said higher and lower prices.

7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

8. The use by respondents of the false, misleading and deceptive statements and representations, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the mistaken belief that said statements and representations were, and are, true and into the purchase of substantial amounts of respondents' merchandise by reason of said mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

9. The aforesaid acts and practices of respondents were, and are, all to the prejudice and injury of the public and of respondents' competitors, and constituted, and now 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.

On the basis of the record herein, the hearing examiner concludes that this proceeding is in the interest of the public and that the following order is appropriate for the just disposition of all the issues in this proceeding as to all parties hereto.

ORDER

It is ordered, That respondents, Discount Fair, Inc., a corporation, and its officers, and Joseph George Goldberg, and Dorothy Goldberg, individually and as officers of said corporation, and respond-

ents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of 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:

(a) That a certain price is respondents' usual and customary price of merchandise when it is in excess of the price at which such merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

(b) That any saving is afforded by the purchase of merchandise unless the price constitutes a reduction from the price at which said merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

2. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amounts by which the prices of said merchandise are reduced from the prices at which said merchandise is usually and customarily sold by respondents in the recent, regular course of their business.

It is further ordered. That the complaint herein be dismissed as to respondent George Feldman, individually and as an officer of Discount Fair, Inc., without prejudice to the right of the Commission to take such action as may be warranted by future facts.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision herein, filed November 13, 1959, service of which was completed on December 30, 1959; and

It appearing that said initial decision is adequate and appropriate in all respects to dispose of this proceeding, except that it should provide for unconditional dismissal of the complaint as to respondent George Feldman, now deceased. Accordingly,

It is ordered. That said initial decision be modified by striking from the last paragraph of the order contained therein the words "without prejudice to the right of Commission to take such action as may be warranted by the future facts."

It is further ordered. That the initial decision as so modified shall, on the 30th day of January, 1960, become the decision of the Commission.

It is further ordered. That the respondents, Discount Fair, Inc., a corporation, and Joseph George Goldberg and Dorothy Goldberg, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Com-

