

stated, both allegations are sustained by the evidence.

In view of the foregoing, the appeal of counsel supporting the complaint is granted. The initial decision is set aside, and we are entering our own findings as to the facts, conclusions and order to cease and desist in conformity with this opinion.

Commissioner Tait did not participate in the decision of this matter.

IN THE MATTER OF
REICHART FURNITURE COMPANY ET AL.

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

Docket 7535. Complaint, July 13, 1959—Decision, Mar. 8, 1960

Consent order requiring retailers of furniture, home furnishings, electrical appliances, etc., in Wheeling, W. Va., to cease making deceptive pricing and savings claims for their merchandise by such advertisements as "Regularly \$16.95 BASE CABINET \$8.88 * * *"; "5-Pc. Day-O-Niter Outfit! Usually \$129.95! Save \$41.95 * * * At Reichart's Only \$88," in which the prices following the words "Regularly," "Usually," and, "List" were greatly in excess of the usual prices, and the purported savings were fictitious.

Mr. Morton Nesmith for the Commission.

Mr. J. T. McCamic of *McCamic & Tinker*, of Wheeling, W. Va., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes hereinafter referred to as the Commission) on July 13, 1959, issued its complaint herein, charging respondents with having violated the provisions of the Federal Trade Commission Act by the use of false, misleading and deceptive advertisements by mail and otherwise in interstate commerce in connection with the prices of furniture, home furnishings and electrical and other household appliances sold by them to the public. Respondents were duly served with process and thereafter on October 26, 1959, agreed to a motion to amend the complaint made by counsel supporting the complaint. This motion was found to be without prejudice to the public interest or to the rights of the parties, and it was sustained by an order of the hearing examiner

on October 28, 1959, and the complaint was thereby amended in certain particulars which were and are reasonably within the scope of the proceeding as initiated by the original complaint.

On January 15, 1960, respondents, their attorneys, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was thereafter duly approved by the Commission's Bureau of Litigation and transmitted to the hearing examiner for his consideration. Having examined said agreement and the complaint as amended, the hearing examiner finds that the agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have agreed to the following matters.

1. Respondent Reichart Furniture Company is a corporation, existing and doing business under and by virtue of the laws of the State of West Virginia, with its office and principal place of business located at 1115-1125 Main Street, in the City of Wheeling, State of West Virginia. Said corporation trades and does business under the name of Reichart's.

Respondents Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson are officers of the corporate respondent. Said individual respondents formulate, direct and control the policies, acts and practices of said corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

2. Respondents admit all the jurisdictional facts alleged in the complaint as amended, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint, as amended, and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

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7. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint, as amended.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint as amended may be used in construing the terms of the order.

Upon due consideration of the complaint as amended and the "Agreement Containing Consent Order To Cease And Desist" submitted herein, the said agreement is hereby approved and accepted, and ordered filed if and when the agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint, as amended and the agreement that the Commission has jurisdiction of the subject-matter of this proceeding, and of the respondents herein; that the complaint as amended states a legal cause for action under the Federal Trade Commission Act, generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; and that the proposed order contained in the agreement is appropriate for the just disposition of all the issues in this proceeding, and should be and hereby is entered. Therefore,

It is ordered, That the respondents Reichart Furniture Company, a corporation, and its officers and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of merchandise 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 price of merchandise in respondents' trade area when it is in excess of the price at which said merchandise is usually and customarily sold in said trade area;

2. That any amount is respondents' customary and usual price of merchandise, when it is in excess of the price at which said merchandise is customarily and usually sold by respondents in the recent regular course of business;

3. That any savings are afforded from respondents' customary and usual prices in the purchase of merchandise unless the price at which the merchandise is offered constitutes a reduction from the price at which it has been sold by respondents in the recent regular course of business;

4. That any saving is afforded in the purchase of merchandise from the price in respondents' trade area unless the price at which it is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold in said trade area.

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 it is usually and customarily sold by respondents or their competitors in the normal course of their business.

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 8th day of March, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Reichart Furniture Company, a corporation, and its officers, and Robert L. Levenson, Edgar L. Levenson and Donald W. Levenson, 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.