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April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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
LASKY ENTERPRISES, INC., ET AL.

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

Docket 7408. Complaint, Feb. 13, 1959—Decision, Apr. 27, 1960

Order requiring furniture and electrical appliance dealers in St. Louis, Mo., to cease representing falsely in advertising in newspapers, etc.—through use of such statements as "Telephone Lounger . . . Reg. 39.59, 24.88 . . . \$219.95 . . . Refrigerator \$158"—that the first figure, often following "Reg.," was the usual price for the merchandise concerned and that the difference between the two prices represented savings therefrom.

Mr. Frederick McManus for the Commission.

Shifrin, Treiman, Agatstein & Schermer, of St. Louis, Mo., by
Mr. Edwin G. Shifrin, for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. Respondents are charged with violation of the Federal Trade Commission Act through the use of fictitious prices in advertising their merchandise. After the filing of respondents' answer to the complaint, hearings were held at which evidence in support of, and in opposition to, the complaint was received. Proposed findings and conclusions have been filed by counsel supporting the complaint, respondents having elected not to file such proposals. Oral argument has been waived, and the case is now before the hearing examiner for final consideration. Any proposed findings and conclusions not included herein have been rejected.

2. Respondent Lasky Enterprises, Inc., is a corporation organized and doing business under the laws of the State of Missouri, with its principal place of business located at 1030 Franklin Avenue, St. Louis, Missouri. The corporation, which trades under the name Franklin Union Furniture Company, also has stores located in the State of Illinois.

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Respondents M. B. Lasky, S. H. Jacobson, Ben Schapiro and Harry Lasky are officers of the corporation and formulate, direct and control its policies, acts and practices.

Respondents are engaged in the sale at retail of furniture and electrical appliances, including refrigerators.

3. There is no dispute over the element of interstate commerce, respondents' answer admitting that they sell and ship their merchandise to purchasers located in states of the United States other than Missouri, and that they maintain a substantial course of trade in their merchandise in commerce as that term is defined in the Federal Trade Commission Act.

4. In an advertisement inserted by respondents in the St. Louis Post-Dispatch on October 29, 1958, there appeared, among other statements, the following:

Telephone Lounger with Swivel Lamp

Reg.

\$39.59

\$24.88

Refrigerators, Freezers, Washers and Dryers

at Big Savings!

\$219.95 Hotpoint Family-Size Refrigerator \$158

\$329.95 Hotpoint 12 cu. ft. Refrigerator \$219.

5. Through the use of these statements respondents represented, directly or by implication, that the amounts \$39.59, \$219.95 and \$329.95 were the prices at which the respective articles of merchandise were usually and regularly sold by respondents, and that the differences between those amounts and the prices at which the articles were offered for sale in the advertisement represented savings or reductions from respondents' customary retail prices.

6. During the hearings, respondents frankly acknowledged that they had never sold either the telephone lounge or the Hotpoint family-size refrigerator at the so-called regular prices. Actually, the telephone lounge had regularly been sold by respondents for \$24.88, and the refrigerator had regularly been sold by them for \$158.00 or for an amount only slightly larger.

As for the last item (the Hotpoint 12 cu. ft. refrigerator), respondents testified that they had made some sales for \$329.95. However, there are in the record copies of invoices showing that in August and September 1958 at least five sales of the item had been made for \$219.00, the so-called reduced price featured in the October 29, 1958, advertisement. Clearly, \$329.95 was not the usual or customary price of the article.

7. Respondents assert by way of defense that the "regular" price of \$39.59 on the telephone lounge was the established or prevailing

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price in that trade area, that is, that the item had regularly been sold at that price by other furniture dealers. There are two reasons why this defense cannot prevail. In the first place, the evidence fails to establish that the article had in fact been sold by others for \$39.59. But even if the evidence did establish this, it would constitute no defense to the use by respondents of the advertisement in question, which represented in effect that the article had regularly been sold by respondents themselves at the higher price.

Respondents further assert that if their customary markup and various items of expense had been added to the wholesale price which they paid for the telephone lounge, the total would have been approximately \$39.59. Obviously this defense is without merit.

As to the Hotpoint family-size refrigerator, respondents assert, and the evidence indicates, that a memorandum issued by the manufacturer stated that the manufacturer's "original recommended list" price was \$219.95, the amount represented in respondents' advertisement as their own regular or customary prices. Here again the defense is without merit. No action on the part of the manufacturer could justify respondents in representing as their own regular, customary price an amount greatly in excess of the price at which the refrigerator was customarily sold by them.

8. It is therefore concluded that the so-called regular prices shown in respondents' advertisement were fictitious, and that no savings were in fact afforded customers purchasing at the so-called reduced prices. Actually, the "reduced" prices were respondents' usual and customary prices on the articles advertised.

9. The use by respondents of fictitious prices and other misleading statements in advertising their merchandise, as set forth above, has the tendency and capacity to mislead members of the purchasing public with respect to the actual prices of respondents' merchandise, and with respect to savings afforded through the purchase of such merchandise, and the tendency and capacity to cause such members of the public to purchase substantial quantities of respondents' merchandise as a result of the erroneous and mistaken belief so engendered. These acts and practices of respondents are to the prejudice of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. The proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Lasky Enterprises Inc., a corporation, and its officers, and M. B. Lasky, S. H. Jacobson, Ben

Schapiro and Harry Lasky, individually and as officers 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of furniture and electrical appliances, or any other merchandise, do forthwith cease and desist from representing, directly or by implication:

1. That any amount is the regular and usual price of respondents' merchandise, when such amount is in excess of the amount at which such merchandise is usually and customarily sold by respondents in the trade area where the representation is made.
2. That any savings are afforded through the purchase of respondents' merchandise, unless the price at which such merchandise is offered constitutes a reduction from the price at which such merchandise has been regularly and customarily sold by respondents in the recent 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 27th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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
FIELDCREST MILLS, INC.