

accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF

BOND UPHOLSTERING CO., INC., TRADING AS
BOND FURNITURE MANUFACTURING CO., ET AL.

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

Docket 7882. Complaint, May 11, 1960—Decision, Aug. 11, 1960

Consent order requiring two associated corporate manufacturers of household furniture, with main offices in Baltimore and Philadelphia and retail outlets in and around those cities and Washington, D.C., to cease such false representations in advertising as that sofas they offered for sale at \$129 and \$129.50 sold at retail for \$300 and purchasers of their furniture would save the difference, and that because of a "Manufacturers' Close-Out", a particular line of sofas could be bought at the manufacturers' wholesale price.

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 Bond Upholstering Co. Inc., a corporation, trading as Bond Furniture Manufac-

turing Co., and Bond Furniture Manufacturing Company, Inc., a corporation, and Melvin Weisberg and Seymour S. Weisberg, individually and as officers of each of said corporations, and Herbert Kaplan and Anthony Trifilietti, individually and as officers of said Bond Furniture Manufacturing Company, Inc., hereinafter referred to as respondents, have violated the provisions of 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. Respondent Bond Upholstering Co. Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 431 North Colvin Street, Baltimore, Md. Bond Upholstering Co. Inc. also trades and does business under the name of Bond Furniture Manufacturing Co.

Respondent Bond Furniture Manufacturing Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 235 Chestnut Street, in the City of Philadelphia, State of Pennsylvania.

Respondents Melvin Weisberg and Seymour S. Weisberg, are individuals and are the sole officers and stockholders of the aforesaid Bond Upholstering Co. Inc. Their principal office and place of business is the same as that of the said Bond Upholstering Co. Inc.

Respondents Melvin Weisberg and Seymour S. Weisberg in addition to their aforesaid individual and corporate capacities, are also officers of and the owners of a substantial portion of the stock of the respondent Bond Furniture Manufacturing Company, Inc. In their official capacity as officers and stockholders of the said Bond Furniture Manufacturing Company, Inc., their principal office and place of business is the same as that of the said Bond Furniture Manufacturing Company, Inc.

Respondents Herbert Kaplan and Anthony Trifilietti are officers of the said Bond Furniture Manufacturing Company, Inc., with their principal office and place of business being the same as that of the said Bond Furniture Manufacturing Company, Inc.

The said individual respondents in their aforesaid respective corporate capacities, formulate, direct and control the acts and practices of each of the said corporate respondents.

PAR. 2. The respondents are now and for some time last past have been engaged in the manufacturing, advertising, offering for sale, sale and distribution of household furniture to distributors and jobbers, to retailers for resale to the public, and to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Respondents furthermore advertise, offer for sale and sell said products at retail to the ultimate consumer from retail outlets operated by them within the confines of the District of Columbia. Such acts and practices thereby constituting commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Said household furniture is manufactured by respondent Bond Upholstering Co. Inc. at its plant in Baltimore, Maryland. Said household furniture is sold to distributors and jobbers and to retailers for resale to the public.

Respondents also maintain a number of retail outlets in and around Washington, D.C., Baltimore, Md. and Philadelphia, Pa., and in the States adjoining said cities wherein said products are offered for sale and sold at retail to the ultimate consumer. For the most part purchasers inspect display samples of said household furniture and place orders therefor. The said orders are filled from respondents' said plant located in Baltimore, Md. Business is transacted and advertisements are disseminated under the names of each of the corporate respondents and under the trade name of Bond Furniture Manufacturing Co.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of their said furniture, respondents have made numerous statements in advertising with respect to the price of the furniture, manufacturer's close out of furniture, savings, status of respondents' business operations and numerous other statements and representations.

Typical and illustrative of the foregoing are the following:

FACTORY-TO-CONSUMER This is the identical sofa we sell to some of the East's leading furniture stores, retailing for \$300.00 . . . The Kimball . . . \$129 . . . we can save you the complete retail markup.

No Middleman! *Buy Factory Direct!* . . . Kimball . . . Sectional Sofas. Compare at \$300. \$129.50. All three pieces . . . You can avoid paying the complete retail markup . . . Buy directly from the maker and put the difference in your pocket.

Manufacturers' Close-Out . . . Foam Rubber Sofas Made of Fine Fabrics Left Over From Large Furniture-Store Purchases . . . Buy Direct From Factory \$129.50 Complete . . . you can buy at manufacturers' actual wholesale price . . . Buy right at the factory show room and put the difference in your pocket.

PAR. 6. Through the use of the aforesaid statements and others of similar import and meaning, not specifically hereinabove set out, respondents represent:

(1) That said sofas offered for sale by respondents at \$129.00 and \$129.50, have an established retail selling price of \$300.00

(2) That savings equal to the difference between the aforesaid alleged established retail selling price of \$300.00 and respondents selling prices of \$129.00 and \$129.50, are afforded to purchasers.

(3) Through the use of the expression "Manufacturers' Close-Out" that a particular line, style or kind of sofa is being discontinued or removed from stock and offered at savings from the usual and customary retail price for said sofas in the trade area in which offered.

PAR. 7. Said statements and representations are false, misleading and deceptive. In truth and in fact:

(1) Said sofas offered for sale by respondent at \$129.00 and \$129.50 do not have an established retail selling price of \$300.00. With few, if any, exceptions the retail selling price of said sofas is substantially less than \$300.00.

(2) Purchasers of respondents' said furniture are not afforded savings in an amount equal to the difference between respondents retail price of \$129.00 or \$129.50 and the alleged retail selling price of said furniture of \$300.00.

(3) The said furniture represented as offered at "Manufacturers' Close-Out" was not and did not constitute a discontinuance or removal from stock of a particular line, style or kind of sofa and was not offered at savings from the usual and customary retail price in the trade area in which offered.

PAR. 8. In the conduct of this business, at all times mentioned herein, respondents have been in substantial competition in commerce, with corporations, firms and individuals in the sale of household furniture of the same general kind and nature as that sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements and representations and practices has had, and now has, the capacity and tendency to mislead the members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs. As a consequence 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.

PAR. 10. The aforesaid acts and practices of respondents, as

herein alleged, 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.

Mr. Terral A. Jordan for the Commission.

Mr. Frank Kaufman, of Baltimore, Md., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on May 11, 1960, charging Respondents with violation of the Federal Trade Commission Act by the use of false, misleading and deceptive statements and representations in their advertising of the household furniture which they manufacture, offer for sale, sell and distribute to distributors and jobbers, to retailers for resale to the public, and to the public.

Thereafter, on June 16, 1960, Respondents, their counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Associate Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter, on June 21, 1960, submitted to the hearing examiner for consideration.

The agreement identifies Respondent Bond Upholstering Co., Inc., as a Maryland corporation also trading and doing business under the name of Bond Furniture Manufacturing Co., with its office and principal place of business located at 431 North Colvin Street, Baltimore, Md.; Respondent Bond Furniture Manufacturing Company, Inc., as a Pennsylvania corporation, with its office and principal place of business located at 235 Chestnut Street, Philadelphia, Pa.; Respondent Melvin Weisberg and Seymour S. Weisberg as individuals and officers of each of the said corporate respondents, their principal office and place of business as individuals and officers of each corporate respondent being, respectively, the same as that of the said corporate respondent; and Respondents Herbert Kaplan and Anthony Trifilietti as individuals and officers of corporate Respondent Bond Furniture Manufacturing Company, Inc., their principal office and place of business being the same as that of the said corporate respondent.

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

Respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; that the 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist, finds that the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Bond Upholstering Co., Inc., a corporation and its officers, trading and doing business under the name of Bond Furniture Manufacturing Co., or trading and doing business under any other name or names, and Bond Furniture Manufacturing Company, Inc., a corporation, and its officers, and Seymour S. Weisberg and Melvin Weisberg, individually and as officers of each of said corporations, and Herbert Kaplan and Anthony Trifilletti, individually and as officers of said Bond Furniture Manufacturing Company, Inc., 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 household furniture or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

(a) That any amount is the usual and regular retail selling price of said merchandise when such amount is in excess of the price at which said merchandise is or has been usually and customarily sold

at retail in recent, regular course of business by retailers and dealers regularly selling said merchandise;

(b) That purchasers at retail of said merchandise are afforded savings in an amount greater than the difference between respondents' retail selling price for said merchandise and the usual and customary retail selling price of said merchandise in the normal course of business in respondents' trade area; or that savings in any amount are afforded purchasers of said merchandise unless such is the fact;

(c) Through the use of the term "Manufacturers' Close-Out" or any other words or phrases, that because of some unusual event or manner of business said merchandise is offered for sale at a savings from respondents' usual and customary price of said merchandise in the recent, regular course of respondents' business unless such is the fact.

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 11th day of August 1960, become the decision of the Commission; and, accordingly:

It is ordered, That Respondents Bond Upholstering Co., Inc., a corporation, trading as Bond Furniture Manufacturing Co., Bond Furniture Manufacturing Company, Inc., a corporation, and Melvin Weisberg and Seymour S. Weisberg, individually and as officers of each of said corporations, and Herbert Kaplan and Anthony Trifilletti, individually and as officers of Bond Furniture Manufacturing Company, Inc., 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.