

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.

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IN THE MATTER OF  
KNIGHT OF REST PRODUCTS, INC., ET AL.

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

*Docket 7870. Complaint, Apr. 19, 1960—Decision, Sept. 13, 1960*

Consent order requiring Newark, N.J., manufacturers of mattresses, upholstered furniture, and Hollywood beds to cease fictitious pricing practices such as attaching to their products labels bearing excessive prices, represented thereby as the usual and customary retail prices in the trade area where the representations were made.

## 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 the Knight of Rest Products, Inc., a corporation, and Robert Bagoon, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appears 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 Knight of Rest Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 615-623 Third Street, Newark, N.J.

Individual respondent Robert Bagoon is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, offer for sale, sale and distribution of mattresses, upholstered furniture and Hollywood beds to retailers for resale 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 New Jersey to purchasers thereof located in the various other States of the United States 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.

PAR. 4. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith, by attaching, or causing to be attached, labels to their products upon which a certain amount is printed, thereby representing, directly or by implication, that said amount is the usual and customary retail price of the said products, in the trade area or areas where the representation is made. In truth and in fact, said amount is fictitious and in excess of the usual and customary price of the said products in the trade area or areas where the representations are made.

PAR. 5. By the aforesaid practice, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the usual and customary retail price of the said products.

PAR. 6. 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 mattresses, upholstered furniture and Hollywood beds of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practice has had, and now has, the capacity and tendency to mislead 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 belief. 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. 8. The 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. Anthony J. Kennedy, Jr.*, for the Commission.

Respondents for themselves.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued and subsequently served its complaint in this proceeding against the above-named respondents charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of mattresses, upholstered furniture and hollywood beds to retailers for resale to the public.

On July 27, 1960 there was submitted to the undersigned hearing examiner an agreement between the respondents and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement the respondents admit all the jurisdictional allegations in the complaint. The agreement also provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the com-

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plaint and the agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for an appropriate disposition of the proceeding as to all of the parties, the agreement is hereby accepted, the following jurisdictional findings made and the following order issued:

1. Respondent Knight of Rest Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 615-623 Third Street, in the city of Newark, State of N.J.

Respondent Robert Bagoon is an officer of the corporate respondent. He formulates, directs and controls the acts of the corporate respondent. His address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondents, Knight of Rest Products, Inc., a corporation, its officers, and Robert Bagoon, individually and as an officer of the corporate respondent, 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 mattresses, upholstered furniture, hollywood beds or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by means of prelabeling, or otherwise, that any amount is the usual and customary retail price of a product when such amount is in excess of the price at which such product is usually and customarily sold at retail in the trade area or areas where the representation is made.

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2. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail price of such products.

## 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 13th day of September 1960, become the decision of the Commission; and