
IN THE MATTER OF
FOAM RUBBER CITY, INC., ET AL.

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

Docket 8239. Complaint, Dec. 28, 1960—Decision, Apr. 4, 1961

Consent order requiring a furniture manufacturer at College Point, Long Island, N. Y., and its five subsidiaries—two at the Long Island location and three in Chicago—to cease such practices as representing falsely in newspaper advertising that the higher prices following the term “Reg.” were the usual retail prices for their furniture and that the difference between the higher and lower prices represented savings to purchasers, and that the prices used in connection with such terms as “Chain Wide Clearance Sale”, “Special Purchase Sale”, “Annual Inventory Sale”, and “Discount Sale”, were reductions from customary retail prices; and to cease representing by use of the term “Foam Rubber City” that only foam rubber was used in the construction of their products, when in fact the cheaper and less desirable polyurethane (polyfoam) was used in a substantial part of them.

Complaint

58 F.T.C.

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 Foam Rubber City, Inc., a corporation, Foam Rubber City "2", Inc., a corporation, Foam Rubber City National, Inc., a corporation, Foam Rubber City of Chicago, Inc., a corporation, "2" Foam Rubber City of Chicago, Inc., a corporation, National Foam Rubber City of Chicago, Inc., a corporation, and Victor Sabatino, Donald Lewis, Joseph Krauss and Morton Klein, individually and as officers of each of said corporations, 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 Foam Rubber City, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 117-20 14th Road, College Point, Long Island, New York. It is the parent company and all of the other corporate respondents are subsidiaries of said corporation. It exercises general control over the practices of said subsidiaries. It is also engaged in manufacturing furniture.

Respondent Foam Rubber City "2", Inc. also is a New York corporation and does business at the same address as the parent corporation. It operates company-owned retail furniture stores located in the New York City metropolitan area.

Respondent Foam Rubber City National, Inc. is a New York corporation and does business at the same address as the parent corporation. It sells to and services franchise dealers in the eastern portion of the United States.

Respondent Foam Rubber City of Chicago, Inc., is an Illinois corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2509 Cermack Road, Chicago Illinois. It is engaged, among other things, in manufacturing furniture.

Respondent "2" Foam Rubber City of Chicago, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2509 Cermack Road, Chicago, Illinois. It operates company-owned retail furniture stores located in the City of Chicago, Illinois.

Respondent National Foam Rubber City of Chicago, Inc. is also an Illinois corporation with its place of business located at 2509 Cermack Road, Chicago, Illinois. It sells to and services franchise dealers in the Chicago and midwestern trading area.

Respondents Victor Sabatino, Donald Lewis, Joseph Krauss and Morton Klein are officers of all the corporate respondents named herein. They formulate, direct and control the policies, acts and practices of all respondents, including the acts and practices hereinafter set forth and described. Their addresses are the same as that of the parent company.

PAR. 2. Respondents Foam Rubber City, Inc. and Foam Rubber City of Chicago, Inc. manufacture furniture which is sold by stores of subsidiaries and franchise dealers. Said furniture is shipped from the States of New York and Illinois by said respondents to said stores and franchise dealers located in other states. Respondent Foam Rubber City, Inc. prepares advertising matter for use by the retail stores operated by its subsidiaries and franchise dealers which it transmits to said stores and franchise dealers from the State of New York to said stores and dealers at their locations in other states. Some or all of said stores and dealers use said advertising matter in advertising the merchandise so supplied to them.

Some of respondents' furniture is and has been shipped across state lines to members of the public after purchase by them from a store or stores operated by respondents. Respondents thus maintain, and at all times mentioned herein have maintained, a course of trade in said furniture, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their furniture, the respondents have made numerous statements in advertisements inserted in newspapers with respect to prices of their furniture and the savings resulting to purchasers.

Typical and illustrative of the aforesaid representations are the following:

York Chair	Finn Chair
Covered—\$39.95	Covered—\$59.95
Reg.—\$69.95	Reg.—\$109.95
The Claremont—Sofa Bed	
Covered—\$99.50	
Reg.—\$139.95	

PAR. 4. By and through the use of the above-quoted statements, and others of similar import not specifically set out herein, the respondents represented that the higher stated prices set out in said advertisements in connection with the term "Reg." were the prices

at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of business and that the difference between the higher and lower prices represented savings to purchasers from respondents' usual and customary retail prices.

PAR. 5. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, the higher prices set out in said advertisements in connection with the term "Reg." were fictitious and in excess of the prices at which the advertised merchandise had been usually and customarily sold by respondents in the recent regular course of business and the differences between the higher and lower prices did not represent savings to purchasers from respondents' usual and customary retail prices.

PAR. 6. Respondents and their franchise dealers in their advertising use such expressions as "Chain Wide Clearance Sale", "Special Purchase Sale", "Annual Inventory Sale" and "Discount Sale" in connection with prices of various articles of furniture, thereby representing that the prices set out constitute reductions from the prices at which said furniture had been usually and customarily sold and that by purchasing the furniture at said prices reductions from the usual and customary prices are afforded to purchasers. In truth and in fact, the advertised prices are the prices at which the furniture is usually and customarily sold and no savings are afforded when the furniture is purchased at the advertised prices.

PAR. 7. Advertising prepared by respondents and used by all outlets in connection with the sale of said products features the expression "Foam Rubber City."

Through the use of the aforesaid expression, the respondents represent, directly or by implication, that only foam rubber is used in the construction of their products, when such is not the fact.

In truth and in fact, polyurethane (polyfoam), a cheaper and less durable product is used in the construction of a substantial part of said products, and respondents do not disclose that fact in all instances.

PAR. 8. By reason of the aforesaid practices, as described in Paragraphs Six and Seven, the respondents place in the hands of their retail stores and franchise dealers the means and instrumentalities by which they may mislead and deceive the public as to the prices of their furniture and the materials used in the construction thereof.

PAR. 9. In the conduct of their businesses, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of furni-

ture of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices 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' furniture 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. 11. 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. DeWitt T. Puckett for the Commission.

Mr. Morton Klein, of College Point, N. Y., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On December 28, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, sale or distribution of furniture and other articles of merchandise. On January 19, 1961, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said

agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Foam Rubber City, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 117-20 14th Road, College Point, Long Island, New York. It is the parent company and all of the other corporate respondents are subsidiaries of said corporation. It exercises general control over the practices of said subsidiaries. It is also engaged in manufacturing furniture.

Respondent Foam Rubber City "2", Inc., also is a New York corporation and does business at the same address as the parent corporation. It operates company-owned retail furniture stores located in the New York City metropolitan area.

Respondent Foam Rubber City National, Inc., is a New York corporation and does business at the same address as the parent corporation. It sells to and services franchise dealers in the eastern portion of the United States.

Respondent Foam Rubber City of Chicago, Inc., is an Illinois corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2509 Cermack Road, Chicago, Illinois. It is engaged, among other things, in manufacturing furniture.

Respondent "2" Foam Rubber City of Chicago, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2509 Cermack Road, Chicago, Illinois. It operates company-owned retail furniture stores located in the City of Chicago, Illinois.

Respondent National Foam Rubber City of Chicago, Inc., is also an Illinois corporation with its place of business located at 2509 Cermack Road, Chicago, Illinois. It sells to and services franchise dealers in the Chicago and midwestern trading area.

543

Order

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents, Foam Rubber City, Inc., Foam Rubber City "2", Inc., Foam Rubber City National, Inc., Foam Rubber City of Chicago, Inc., "2" Foam Rubber City of Chicago, Inc., National Foam Rubber City of Chicago, Inc., corporations, and their officers, and Victor Sabatino, Donald Lewis, Joseph Krauss and Morton Klein, individually and as officers of all of said corporations, 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 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:

1. Representing, directly or by implication:

(a) That any amount is respondents' usual and customary retail price of respondents' merchandise when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail by respondents and their franchise dealers in the recent, regular course of their business;

(b) That any saving from respondents' retail price is afforded to the purchasers of respondents' merchandise, unless the price at which it is offered constitutes a reduction from the price at which said merchandise has been usually and customarily sold by respondents and their franchise dealers in the recent, regular course of business.

2. Using the words or expressions "regular", "reg.", "clearance sale", "discount sale", "special purchase sale" or "sale", or any other word or expressions of the same import, to describe or refer to retail prices of respondents' merchandise unless such prices constitute reductions from the prices at which the advertised merchandise has been sold by respondents and their franchise dealers in the recent, regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise, or the amounts by which

Complaint

58 F.T.C.

the prices of said merchandise are reduced from the prices at which said merchandise is usually and customarily sold at retail in the recent, regular course of business.

4. Misrepresenting the materials used in the construction of merchandise.

5. Furnishing means and instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1, 2, 3 and 4 thereof.

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 4th day of April 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the 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.
