

Complaint

IN THE MATTER OF

MIDWEST LAMP COMPANY ET AL.

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

Docket 8381. Complaint, May 4, 1961—Decision, Aug. 23, 1961

Consent order requiring Milwaukee distributors of lamps to retailers to cease such misrepresentations as attaching to their lamps tickets bearing excessive amounts represented thereby as regular retail prices, and bearing the words "nationally advertised" when such claim was false.

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 Midwest Lamp Company, a corporation, and Ivan Weinstein, Samuel Goldenberg and Lillian Weinstein, individually and as officers of said corporation, 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 Midwest Lamp Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 302 North Broadway Street, Milwaukee, Wisconsin.

Individual respondents Ivan Weinstein, Samuel Goldenberg and Lillian Weinstein are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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, sale and distribution of lamps 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 Wisconsin to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein, have maintained, a substantial course of trade in said prod-

ucts 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, and misrepresenting that their product is nationally advertised, by the following methods and means:

(a) By attaching, or causing to be attached, tickets to their said lamps upon which certain amounts are printed, thereby representing, directly or by implication, that said amounts are the usual and customary retail price of said lamps in the trade areas where such representation is made. In truth and in fact, said amounts are fictitious and in excess of the usual and customary retail prices of said lamps in the trade areas where such representation is made.

(b) By printing, or causing to be printed, on their price tags, the words "nationally advertised", thereby representing that said lamps were advertised nationally. In truth and in fact, said lamps are not advertised nationally.

PAR. 5. By the aforesaid practices, respondents placed in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of said lamps and as to the nature and extent of their advertising.

PAR. 6. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of lamps 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 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' 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 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. Michael J. Vitale supporting the complaint.
Respondents, *pro se*.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on May 4, 1961, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of fictitious prices and misrepresentations as to the extent of their advertising, in connection with the sale and distribution of lamps manufactured by them. After being served with said complaint, respondents entered into an agreement dated June 20, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and affect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said 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.

The order which has been agreed upon provides that the complaint shall be dismissed as to respondent Samuel Goldenberg in his individual capacity. The basis for such disposition as to said re-

Order

59 F.T.C.

spondent is set forth in an affidavit by him subscribed and sworn to May 31, 1961, and submitted together with and as part of the above-mentioned agreement containing consent order. Said affidavit recites that said respondent did not formulate, direct or control the acts and practices of the corporate respondent, including those alleged in the complaint, and that he resigned as an officer on May 26, 1961, upon learning of the charges in said complaint. The parties have recommended that the complaint be dismissed as to respondent Samuel Goldenberg in his individual capacity.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, together with the affidavit of Samuel Goldenberg which has been made a part of said agreement, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Midwest Lamp Company is a corporation existing and doing business under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business located at 302 North Broadway Street, in the City of Milwaukee, State of Wisconsin.

Respondents Ivan Weinstein and Lillian Weinstein are officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as the corporate respondent. Respondent Samuel Goldenberg resigned as an officer on May 26, 1961. His address is 735 North Water Street, Milwaukee, 2, Wisconsin.

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, Midwest Lamp Company, a corporation, and its officers, and Ivan Weinstein and Lillian Weinstein, individually and as officers of said corporation, and Samuel Goldenberg as a former officer 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 and distribution of lamps, 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 preticketing or in any other manner, that any amount is the usual and regular retail price of merchandise when such amount is in excess of the price at which said merchandise is usually and customarily sold at retail in the trade area or areas where the representations are made.

2. Furnishing to others any means or instrumentality by or through which the public may be misled as to the usual and customary prices of respondents' merchandise.

3. Representing, directly or by implication, that merchandise is nationally advertised when such is not the fact.

It is further ordered, That the complaint, insofar as it relates to respondent Samuel Goldenberg in his individual capacity be, and the same hereby is, dismissed.

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 23d day of August 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.

IN THE MATTER OF

MINNESOTA MINING AND MANUFACTURING COMPANY