

IN THE MATTER OF
TOWERS MARTS, INC., ET AL.

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

Docket 8338. Complaint, Mar. 16, 1961—Decision, Sept. 15, 1961

Consent order requiring a corporation with office in Rockville, Conn., operating five wholly-owned subsidiary retail stores which sold wearing apparel, hardware, and sports equipment, and licensing other concerns to operate departments in its stores to sell their own merchandise, to cease the practice of using fictitious comparative prices in newspaper advertisements, such as "Rotary Mower \$58.76 Compare at \$98" and "Fielders' Glove Compare at

Complaint

59 F.T.C.

\$10 . . . 4.33", where the amounts set out under "compare at" were substantially in excess of usual retail prices in the area and afforded purchasers no savings, as implied.

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 Towers Marts, Inc., a corporation, and Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy, individually and as officers of the 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 Towers Marts, 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 210 East Main Street, Rockville, Connecticut.

Respondents Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy 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, through wholly-owned subsidiaries and licensees, are now and for some time last past have been engaged in the advertising, offering for sale and sale of many articles of merchandise, including wearing apparel, hardware and sports equipment to the public.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents, from their principal office of business, located in Rockville, Connecticut, through five wholly-owned subsidiaries, operate five retail stores, some of which are located in States of the United States, other than the State of Connecticut. Through a sixth wholly-owned subsidiary, Mill Outlet Stores, Inc., respondents advertise, offer for sale and sell children's wear to the purchasing public at the aforesaid five retail stores.

In addition thereto, respondents enter into contracts with business corporations, firms and individuals, some of whose principal offices and places of business are located in States of the United States, other than the State of Connecticut. These contracts, called "License Agreements", provide that respondents, as licensors, permit such business corporations, firms and individuals, as licensees, to operate departments in respondents' retail stores for the purpose of offering for sale

and selling to the purchasing public the licensee's particular type of merchandise, e.g., hardware, sporting goods, shoes, etc.

In accordance with the provisions of the aforesaid "License Agreements", during the lifetime of said agreements, and at all times mentioned herein, respondents have maintained, and are now maintaining, control over the activities of their retail stores, such control being exercised over, among other matters, the quality and type of merchandise to be offered for sale, all advertising of such merchandise, the collection and disbursement of monies received from all sales, with the bookkeeping and auditing operations connected therewith. In connection with the control and operation of their wholly-owned retail stores and their licensing to others to maintain and operate departments in said stores at their locations in the various States of the United States, respondents are and have been transmitting and receiving through the United States mail, advertising matters, letters, contracts, checks, money orders and other written instruments which are sent and received between respondents' principal place of business in the State of Connecticut and respondents' wholly-owned stores located in States other than Connecticut, and persons, firms and corporations located in various other States of the United States; and thereby have engaged in extensive commercial intercourse in commerce and have maintained at all times mentioned herein a constant, substantial trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid and for the purpose of inducing the purchase of their merchandise in commerce, respondents have engaged in the practice of using fictitious comparative prices in advertisements in various newspapers. Among and typical of such practice, but not all inclusive thereof, are the following statements:

Rotary Mower

\$58.76

Compare at \$98

Fielders' Glove

Compare at \$10

. . . 4.33

PAR. 5. Through the use of the aforesaid statements and others similar thereto, but not included herein, respondents represented, directly or by implication:

1. That the amounts set out under "compare at" were the prices at which the merchandise advertised had been usually and customarily sold at retail in the recent course of business in the trade area wherein the representation was made.

2. That purchasers of the merchandise advertised were afforded savings of the difference between the higher "compare at" prices and the advertised sales price.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

1. The amounts set out under "compare at" were substantially in excess of the prices at which the advertised merchandise had been usually and customarily sold at retail in the recent course of business in the trade area where the representations were made.

2. Purchasers of the advertised merchandise were not afforded savings of the difference between the "compare at" prices and the advertised sales prices.

PAR. 7. In the 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 the aforesaid merchandise.

PAR. 8. The use by respondents of the false, misleading and deceptive statements, representations and practices, as aforesaid, 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 amounts of respondents' merchandise by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondents from its competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. 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. Anthony J. Kennedy, Jr., for the Commission:

Cohn, Elovich, Levin & Kaufman, of New York, N.Y., for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission on March 16, 1961, issued its complaint against the above-named respondents, charging them with having violated the Federal Trade Commission Act, by making false statements concerning their products. Respondents appeared and entered into an agreement dated July 3, 1961, containing a consent order to cease and desist, disposing of all the issues in this proceeding without

further hearings, which agreement has been duly approved by the Bureau of Deceptive Practices. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner and the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, 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, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §§ 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and issues the following order:

1. Respondent Towers Marts, 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 210 East Main Street, Rockville, Connecticut.

2. Respondents Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

3. 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.

It is ordered, That Towers Marts, Inc., a corporation, its officers and Samuel J. Rosenstein, David Segal, Jack L. Graber and David Portnoy, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate device, in connection with the advertising, offering for sale or sale of general merchandise or any product 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) Through the use of the term "compare at" or any other term of the same import, or representing in any other manner, that any amount is the usual and customary price of merchandise in respondents' trade area when it is in excess of the price at which merchandise is usually and customarily sold at retail in the trade area where the representation is made;

(b) That purchasers of the advertised merchandise are afforded savings of the difference between the "compare at" prices or prices in the trade area or areas where the representations are made and the advertised prices of the respondents, unless the price at which the merchandise is advertised and offered for sale by the respondents constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail in the trade area or areas where the representation is made;

2. Misrepresenting, in any manner, the amount of savings available to purchasers of respondents' merchandise or the amount by which the price of said merchandise has been reduced from the price at which it is usually and customarily sold at retail in the trade area or areas where the representation is made.

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 15th day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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.

Complaint

IN THE MATTER OF

EGELBERG & SEIDMAN, INC., ET AL.

CONSENT ORDER., ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 8354. Complaint, Apr. 14, 1961—Decision, Sept. 15, 1961

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by labeling and invoicing artificially colored fur products as "natural" and failing to comply in other respects with labeling requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Egelberg & Seidman, Inc., a corporation, and Morris Egelberg and Hyman Seidman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Egelberg & Seidman, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 150 West 28th Street, New York, New York.

Morris Egelberg and Hyman Seidman are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.