

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

Docket 8098. Complaint, Aug. 25, 1960—Decision, Oct. 25, 1961

Consent order requiring Washington, D.C., retailers of men's and boys' wearing apparel to cease making deceptive price and savings claims in advertising

Complaint

59 F.T.C.

and labeling—such as “. . . Summer Suits Reg. \$59.95 now \$39.99”, “Were \$39.50 now \$29.99”, “Rayon Silk \$59.50 Sale Price \$39.99”, etc.—when the higher prices thus set out were not regular retail prices.

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 Young Men's Shop of Washington, Inc., a corporation, and Martin B. Levy, President, and Jacob Wolk, Secretary-Treasurer, 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 its public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Young Men's Shop of Washington, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia with its principal place of business located at 1319-21 F. Street, NW., in the District of Columbia. Said corporation trades under the name of Young Men's Shop and is engaged in the sale of men's and boys' wearing apparel in stores located in the District of Columbia and in Arlington County, Virginia.

Respondents Martin B. Levy and Jacob Wolk are officers of the corporate respondent and maintain business offices at the same address as the corporate respondent. These individual respondents formulate, direct and control the acts, policies and practices of the corporate respondent.

PAR. 2. In the course and conduct of their business respondents have sold their products at retail to customers in the District of Columbia and in the State of Virginia 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. 3. In the course and conduct of their business, at all times mentioned herein, respondents are now and have been, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by the respondents.

PAR. 4. In the course and conduct of their business respondents have caused advertisements to be inserted in newspapers circulated in the District of Columbia and in States adjacent thereto in which their merchandise was offered at alleged reduced prices. Among and typical

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Complaint

of the statements made in said advertisements, but not all inclusive thereof, are the following:

Reorganization Sale. Our Entire Stock of Suits, Topcoats, Sportscoats and Slacks. Reduced from 20% to 30% Off.

* * *

Group Silk Blend Summer Suits Reg. \$59.95 now \$39.99.

* * *

Sport Coats. Year Around Weights and Summer Madras Cottons, in newest patterns.

* * *

Were \$39.50 now \$29.99.

Respondents also attached tickets to the suits and sportcoats referred to in the aforesaid advertisements upon which was printed, respectively among other things, the following:

Rayon Silk \$59.50	Sale Price
\$39.99	and
\$39.50	Sale Price \$29.99

PAR. 5. By and through the use of the aforesaid statements, and others of the same import not specifically set out herein, respondents represented that the higher prices set out in the advertisements and on the labels under the designation of "Reg" and "Were" and not specifically designated, were the prices at which the suits and sportcoats had been sold at retail by respondents in the recent, regular course of their business and that the differences between the higher prices and lower sales prices represented savings from respondents' usual and customary retail prices for said merchandise in the recent, regular course of business.

PAR. 6. Said statements and misrepresentations were false, misleading and deceptive. In truth and in fact, the higher prices set out in said advertisements were not the prices at which respondents had sold the said suits and sportcoats at retail in their recent, regular course of business but were in excess of such prices and the difference between said prices and the lower sales prices did not represent savings from respondents' usual and customary retail prices for said merchandise in the recent, regular course of business.

PAR. 7. The use by the respondents of the aforementioned false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that such statements and representations were, and are true, and into the purchase of a substantial amount of respondents' merchandise because of said erroneous and mistaken belief. As a result

thereof, trade has been unfairly diverted to respondents from their said competitors and injury has thereby been done to competition in commerce.

PAR. 8. The acts and practices of respondents, as herein alleged, were, and are, all of 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.

Messrs. Michael P. Hughes and Morton Nesmith supporting the complaint.

Steptoe & Johnson by *Mr. I. Martin Leavitt*, of Washington, D.C., for respondents.

INITIAL DECISION by John B. Poindexter, Hearing Examiner

On August 25, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondents had violated the provisions of the Federal Trade Commission Act. The complaint alleged that respondents had made false, misleading and deceptive statements and representations with regard to their merchandise.

After issuance and service of the complaint the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. Under the terms of the agreement the undersigned hearing examiner issued an initial decision on February 28, 1961 and on April 7, 1961 the Commission issued an order which vacated the hearing examiner's initial decision and remanded the case to the hearing examiner requesting additional information in support of the proposed dismissal of the complaint as to Jacob Wolk, as an individual. Additional information has been set out in an affidavit, dated June 30, 1961, executed by Martin B. Levy, President of said corporation. The affidavit attached to and made a part of the agreement states that respondent Jacob Wolk, although an officer, has not at any time formulated, directed or controlled corporate policy, nor has he participated in the acts and practices of the corporation, including the alleged unfair trade practices set forth in the complaint and also that he does not own any stock of the corporation. Accordingly, the term "respondents," as hereinafter used, does not include Jacob Wolk in his individual capacity.

Said agreement further provides as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it be-

comes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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 undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent The Young Men's Shop of Washington, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia. Said corporation trades under the name of Young Men's Shop with its principal place of business located at 1319-21 F Street, N.W., in the District of Columbia.

2. Respondents Martin B. Levy and Jacob Wolk are officers of the corporate respondent. Respondent Martin B. Levy formulates, directs and controls 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 and the proceeding is in the public interest.

ORDER

It is ordered, That respondents The Young Men's Shop of Washington, Inc., a corporation, and its officers, and Martin B. Levy, individually and as an officer of said corporation, and Jacob Wolk, as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of men's or boys' clothing, or other 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' customary and usual retail price of their merchandise, when it is in excess of the price at which

said merchandise is usually and customarily sold at retail by respondents in the recent, regular course of business;

(b) That any savings are afforded from respondents' customary and usual retail prices in the purchase of their merchandise unless the price at which such merchandise is offered constitutes a reduction from the price at which it has been usually and customarily sold at retail by the respondents in the recent, regular course of business.

2. Using the term "Reg." or the word "Were" or any other term or words of the same import, in connection with the retail prices of their merchandise unless such prices are the prices at which the merchandise referred to has been usually and customarily sold at retail by respondents in the recent, regular course of business.

3. Misrepresenting in any manner the amount of savings available to purchasers at retail of their merchandise, or the amount by which the retail price of said merchandise is reduced from the price at which it is usually and customarily sold at retail by respondents in the recent, regular course of business.

It is further ordered, That the complaint be dismissed as to Jacob Wolk, individually.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall on the 25th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents, The Young Men's Shop of Washington, Inc., a corporation; Martin B. Levy and Jacob Wolk, as officers of said corporation; and Martin B. Levy, individually, 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

CROMIT PRODUCTS CORPORATION TRADING AS ALBICROME PRODUCTS ET AL.