

Complaint

59 F.T.C.

It is further ordered, That respondents, Oxwall Tool Company, Ltd., Max J. Blum, and Sidney Blum, 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
STERN & COMPANY ET AL.

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

Docket 8277. Complaint, Jan. 18, 1961—Decision, Dec. 26, 1961

Consent order requiring a department store chain with its main office in Philadelphia and operating stores in Pennsylvania, New Jersey, and Delaware, to cease such fictitious pricing practices as advertising "Englander Inner-Spring Mattress and Box Spring" "2 for the Nationally Advertised Price of 1", "69.95 for both. Were 139.90"; and to cease using the words "guaranteed" and "10-year guarantee" in advertising certain merchandise when the guarantees were limited and conditional.

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 Stern & Company, a corporation, and Harris I. Stern, Joseph Shanis, David Solis, Jr., and Leonard Brecher, 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. Stern & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 706-714 Market Street, Philadelphia, Pennsylvania.

Respondents Harris I. Stern, Joseph Shanis, David Solis, Jr., and Leonard Brecher are officers of the corporate respondent. They formulate, direct and control the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and at all times material hereto have been engaged in the business of operating department stores selling merchandise to the public in competition with other corporations, firms and individuals also engaged in selling to the public merchandise

of the same nature. Respondents own and operate department stores located in Pennsylvania, New Jersey and Delaware. Respondents' annual volume of business is approximately \$8 million.

PAR. 3. In the course and conduct of their business respondents have been engaged and are engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation advertisements designed and intended to induce sales of its merchandise. In the further course and conduct of their business respondents now cause their merchandise, when sold, to be transported from their places of business located in Pennsylvania to purchasers thereof located in various other States of the United States.

Respondents have maintained, and now maintain, a substantial course of trade of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among and typical, but not all inclusive of the statements appearing in the advertisements described in paragraph Three, are the following:

2 for the Nationally Advertised Price of 1—Englander "Air-Conditioned" Tuftless Inner-Spring Set—Mattress and Box Spring 69.95 for both Were 139.90*

*Nationally Advertised in Look at 69.95 each.

Smooth, Button-Free Tuftless Top, Formally 139.50 Save almost ½ \$78.00

Plus Hoover Vacuum Free—Hoover 'Speed' Upright Vacuum Cleaner included Free with your broadloom order. Completely rebuilt and guaranteed for long service in your home.

10-year guarantee—Workmanship and construction guaranteed 10 years. No other Hollywood carries this amazing "pro rata" guarantee.

PAR. 5. Through the use of the higher amounts in connection with the words and terms "were" and "formerly," the respondents represented that said amounts were the prices at which they had usually and customarily sold the merchandise referred to in the recent and regular course of business, and through the use of said amounts and the lesser amounts that the differences between said higher amounts and the lesser amounts represented savings from the prices at which the merchandise referred to had been sold by respondents in the recent regular course of their business.

PAR. 6. The aforesaid representations were false, misleading and deceptive. In truth and in fact, the amounts set out in connection with the words and phrases, "were" and "formerly", were in excess of the prices at which the articles of merchandise referred to had been sold by the respondents in the recent regular course of their business, and the differences between said amounts and the lesser amounts did not represent savings from the prices at which the merchandise had been sold by respondents in the recent regular course of their business.

PAR. 7. Respondents through the use of the words "guaranteed"

and "10 year guarantee" in the advertising of certain of their products thereby represented that the said products are guaranteed by them in every respect. Said statements are false, misleading and deceptive. In truth and in fact, the guarantees were limited and conditional, which limitations and conditions were not set forth in the advertising.

PAR. 8. The use by respondents of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' merchandise because of such mistaken and erroneous belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice of the public and 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and an agreement by and between respondents Stern & Company, Harris I. Stern and Joseph Shanis and their counsel, and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by said respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission that they have violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules, and which agreement further provides for dismissal of this proceeding as to respondents David Solis, Jr. and Leonard Brecher; and

The Commission having considered said agreement and the affidavits made a part thereof which state, among other things, that respondents David Solis, Jr. and Leonard Brecher have severed all connection with the corporate respondent and that they had no voice in formulating or directing the advertising and merchandising practices of the corporate respondents; and

The Commission having determined that the agreement provides an adequate basis for appropriate disposition of the proceeding, the

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Order

agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Stern & Company is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 706-714 Market Street, in the City of Philadelphia, State of Pennsylvania.

Respondents Harris I. Stern and Joseph Shanis are officers of the corporate respondent and they formulate, direct and control the acts and practices of said corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction herein and this proceeding is in the public interest.

ORDER

It is ordered, That respondents Stern & Company, a corporation, and its officers, and Harris I. Stern and Joseph Shanis, individually and as officers 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 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, that:

(a) Any amount is the 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 in the recent regular course of business.

(b) Any saving from respondents' usual and regular 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 in the recent regular course of their business.

2. Using the words "were" and "formerly", or any other words or terms of the same import, to describe or refer to prices of merchandise unless respondents have sold said merchandise at such prices.

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

4. Representing, directly or by implication, that merchandise offered for sale or sold by respondents is guaranteed unless the terms and conditions and extent to which such guarantee applies and the

manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

It is further ordered, That the complaint be dismissed as to David Solis, Jr. and Leonard Brecher.