

sixty (60) days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with this order.

IN THE MATTER OF
GEORGE'S RADIO AND TELEVISION COMPANY, INC.,
ET AL.

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

Docket 8134. Complaint, Oct. 7, 1960—Decision, Jan. 19, 1962

Order requiring retailers of electrical appliances and other merchandise in Washington, D.C., to cease representing falsely in newspaper advertising that a fictitiously high price or an excessive "Mfr's. Sug. List" was the usual retail price in the Washington area and that purchasers of merchandise at the advertised sale price would save the difference between the two.

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

Complaint

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Trade Commission, having reason to believe that George's Radio and Television Company, Inc., a corporation, and George Wasserman, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent George's Radio and Television Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business at 2146—24th Place, Northeast, Washington, D.C.

Individual respondent George Wasserman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale and sale of electrical appliances and other merchandise at retail to the public under the name "George's Warehouse Supermarts."

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business in the States of Maryland and Virginia and in the District of Columbia to purchasers thereof located in States other than the States in which shipments originated, and in the District of Columbia, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said merchandise, 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 retail prices in advertisements published in various newspapers. Among and typical of such practices, but not all inclusive thereof, are the following statements:

\$429.95 Westinghouse Laundromat Washer Dryer Combination-----\$289

\$269.95 Westinghouse Automatic Washer-----\$136

\$669.95 16 Cu. Ft. Two Door Refrigerator Freezer—Westinghouse-----\$399

\$549.95 Westinghouse 17.6 cu. ft. Upright Freezer-----\$288

\$429.95 Westinghouse 14.8 cu. ft. Upright Freezer-----\$227

Mfr's. Sug. List \$499.95 WESTINGHOUSE 12.1 cu. ft. 2 Door Refrigerator-Freezer-----\$249

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

1. That the higher stated prices, when unaccompanied by any descriptive language, were the prices at which the merchandise advertised was usually and customarily sold at retail by the respondents in the recent regular course of business.

2. That the amount designated as "Mfr's. Sug. List" was the price at which the merchandise advertised was usually and customarily sold at retail in the trade area where the representations were made.

3. That purchasers of the products advertised were afforded savings of the differences between the higher stated prices unaccompanied by any descriptive language or the amount, designated "Mfr's. Sug. List", and the advertised sales price.

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

1. The higher stated prices, unaccompanied by any descriptive language, were substantially in excess of the prices at which the advertised products were usually and customarily sold at retail by the respondents in the recent regular course of business.

2. The amount designated as "Mfr's. Sug. List" was substantially in excess of the price at which the advertised product was usually and customarily sold at retail in the trade area where the representation was made.

3. Purchasers of the advertised products were not afforded savings of the differences between the higher stated prices, unaccompanied by any descriptive language or the amounts designated "Mfr's. Sug. List" 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 merchandise of the same general kind and nature as that sold by the respondents.

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 their 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., supporting the complaint.

Grossberg, Yochelson & Brill by *Mr. Irving B. Yochelson* of Washington, D.C., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

This is a false and misleading advertising case involving the household appliance retail distribution field in the metropolitan area of Washington, D.C. It poses primarily the simple question whether or not a manufacturer's suggested retail price, higher than the price usually charged by respondents or in the trade area by similar establishments, may legally be advertised in juxtaposition with respondents' lower price. Claimed justification is that the suggested resale price of the manufacturer, whether identified as such, or not, is properly used as a means of identifying the product.

The complaint was issued October 7, 1960, under Section 5 of the Federal Trade Commission Act. In addition to the formal allegations identifying the respondents, describing the interstate character and effect of the acts on commerce, and competition and charging the violation; the complaint sets forth six typical examples of advertisements. Five of these set forth a price, a description of the article, and a second lower price. The sixth has the first price preceded by the words "Mfr's Sug. List." The complaint then charges that the prices without the statement, "manufacturer's suggested list," constitute false representations that respondents usually sold the article at the higher price, that the price with such designation constituted a representation that such price was the usual sales price in the trade area, and that the purchasers were afforded savings equal to the difference between the prices placed in juxtaposition.

Respondents in their answer deny that the prices are misrepresentations and claim that they are used solely to identify the items sold. They also allege abandonment and state that the public is not injured. They admit the formal allegations identifying the parties.

Following an informal conference with the hearing examiner, counsel stipulated substantially all of the facts alleged in the complaint except the allegations concerning the price level of the articles sold in the trade area and the conclusion of misrepresentation. Both

counsel are to be commended for their cooperative efforts which materially reduced the record and emphasized their respective positions by dispensing with unnecessary proof.

The Commission's case was introduced in two hearings held February 15 and 20, 1961, and the respondents' case was commenced March 29 and concluded March 30, 1961. Proposed findings of fact and conclusions of law were submitted May 26, 1961. Respondents made a motion to dismiss the complaint at the close of the Commission's case for lack of proof. Decision was then reserved under amended Rule 38(e). The motion is now denied.

All proposed findings of fact and conclusions of law not herein-after specifically found or concluded are herewith rejected and on the basis of consideration of the entire record, the hearing examiner makes the following findings as to facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent George's Radio and Television Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its principal office and place of business at 2146—24th Place, Northeast, Washington, D.C.

2. Individual respondent George Wasserman is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their places of business in the States of Maryland and Virginia and in the District of Columbia to purchasers thereof located in States other than the States in which shipments originated, and in the District of Columbia, and maintain, and at all times mentioned herein have maintained a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. George's Radio and Television Company, Inc., the corporate respondent in the subject case, currently doing business as "George's Warehouse Supermarts", has been incorporated for a period in excess of thirty (30) years.

5. George Wasserman, the individual respondent in the subject case, has been and still is President of the corporate respondent since its incorporation. The current officers of the corporate respondent are:

George Wasserman, *President and Treasurer*

Janice Wasserman, *Vice President*

Ruth Casdon, *Secretary*

6. George Wasserman is the sole stockholder of the corporate respondent and owns 100% of its stock.

7. The respondents placed the following advertisements in the Washington Post and Times Herald and the Evening Star, newspapers of general circulation in the Washington, D.C., Metropolitan area on the dates indicated, under the name of "George's Warehouse Supermarts":

(a) 429.95 Westinghouse Laundromat Washer Dryer Combination—\$289.

was advertised in the Washington Post and Times Herald on September 16 and 23, 1959, and in the Evening Star on September 16, and September 23, 1959.

(b) \$269.95 Westinghouse Automatic Washer—\$136 or \$134.

(The last amount depending on the date of the advertisement) was advertised in the Washington Post on July 23, 28, and 30, 1959, and on September 2, 4, 6, 9, 18, and 30, 1959, and in the Evening Star on August 8, 23, 26, 28, and 30, 1959, and September 2, 4, 6, 9, 18, 23, and 30, 1959.

(c) \$669.95 16 cu. ft. Two Door Refrigerator Freezer—Westinghouse—\$399. in the Washington Post on September 30, 1959.

(d) \$549.95 Westinghouse 17.6 cu. ft. Upright Freezer—\$288 or \$284.

(The last amount depending upon the date of the advertisement) was advertised in the Washington Post on September 2, 4, 6, 11, and 13, 1959, and in the Evening Star on September 4, 6, 9, and 11, 1959.

(e) \$429.95 Westinghouse 14.8 cu. ft. Upright Freezer—\$227 or \$217.

(The last amount depending on the date of the advertisement) was advertised in the Washington Post on September 4 and 6, 1959, and in the Evening Star on September 4, 6, and 16, 1959.

(f) Mfr's Sug. List \$499.95 Westinghouse 12.1 cu. ft. 2 Door Refrigerator-Freezer—\$249.

was advertised in the Washington Post on September 9, 1959.

8. The Westinghouse Appliances described in the advertisements designated in finding No. 7, have been identified by the respondents with the following Westinghouse models:

	<i>Model</i>
(a) \$429.95 Westinghouse Laundromat Washer Dryer Combination	WD-3V
(b) \$269.95 Westinghouse Automatic Washers.....	L 113
(c) \$669.95 16 Cu. ft. 2-Door Refrigerator Freezer.....	DCM 16
(d) \$549.95 17.6 Cu ft. Upright Freezer.....	UM 18

- (e) \$429.95 14.8 Cu. ft. Upright Freezer----- UM 14
 (f) \$499.95 Westinghouse 12.1 Cu. ft. 2-Door Refrigerator-
 Freezer ----- TDL 12

9. The higher stated prices in the advertisements described in finding No. 7, unaccompanied by any descriptive language, were substantially in excess of the prices at which the advertised products were usually and customarily sold at retail by the respondents in the recent regular course of business. Such advertised prices were, however, the manufacturers' suggested retail prices in the three instances where the price sheets identify the model.

10. Respondent corporation has made numerous sales of equipment described in finding No. 8 in commerce as "commerce" is defined in the Federal Trade Commission Act.

11. Numerous sales of equipment of the same general character have been made by others in commerce in the same trade area in which respondent sells equipment.

12. There has been substantial competition in commerce between respondent corporation and other persons, firms and corporations in the sale of merchandise of the same general kind and nature as that sold by respondent corporation.

13. The advertisements issued by respondents, read as a whole, convey to the reader an impression that the higher stated prices were prices at which the merchandise was usually and customarily sold at retail by the respondents in the recent regular course of business.

14. The twelve competitors called by counsel supporting the complaint, including discount houses, accessory shops and a department store, established that each of these competitors had a policy of making sales of merchandise, of the same kind and nature as that sold by respondent corporation, at prices substantially less than the manufacturer's suggested resale price. Said witnesses appeared to constitute a fair cross section of the competition in the field.

15. One competitor witness for the Commission stated that certain of his customers had told him of sales by others of the same type of merchandise at the manufacturer's suggested list price. His testimony, however, was confused and therefore, entitled to little weight. It is inferred from the testimony of the other competitors called by counsel supporting the complaint that rarely, if ever, were sales made at the manufacturer's suggested retail price. Sales were almost invariably made at prices below that figure, and it was the pricing policy of such competitors to price their goods generally below manufacturer's suggested retail prices.

16. Testimony adduced by respondents failed to discredit the testimony offered by the Commission witnesses that there was little selling at the manufacturer's suggested retail price by competitors comparable to respondents. This testimony was that most sales by a few credit stores, or stores not specializing in the sale of appliances, were made at the suggested manufacturer's retail price or in one case some at higher prices. Neither party called witnesses from the manufacturer to testify how the suggested prices were established.

17. Miss Sandburg of Thompson Brothers Furniture testified that the major line of that company was furniture. When asked whether it was in competition with respect to the sale of appliances, she said that in the sense of selling something that someone else was selling it was "[B] (b)ut, as a major business endeavor I couldn't say that, no . . .". Asked further, the witness testified that she seldom advertised appliances, did no comparison shopping and did not even check the advertising of appliances by others.

18. Thomas Wolking of Cameo Appliance Company testified that "95 or 90 percent (of sales) would be at the manufacturer's retail price." On cross-examination, however, he admitted his firm was a credit house and that "if we sell something on terms we may charge the list price, when we sell something for cash we may give something off, a larger trade or discount. . . ." As to cash sales his testimony was: "Well, we get our manufacturer's list price on a cash proposition occasionally."

19. David Franks, who was engaged in business selling "records, furniture, refrigerators, televisions and so forth," testified that his prices were "the list prices, and in some cases higher than the list prices." On cross-examination, he admitted that the principal criterion in establishing this higher price is the fact that he has to sell on credit.

20. Carl Mirman, an employee of respondent George's Radio and Television Company, Inc., who was formerly employed by Slattery's as a store manager on Naylor Road in Southeast Washington, testified that the merchandise sold by that store was "ticketed by manufacturer's name, model number, and manufacturer's suggested list price." On cross-examination, however, Mirman admitted that the manufacturer's list price was by far the exceptional retail price at Slattery's. He said it was used "when we took a trade-in", and referring to a hypothetical case of trading in a TV, testified that they would definitely not get the allowed price when selling an article turned in; that the allowance was "inflated, but it is based on the manufacturer's price to give it that inflated appearance."

21. Testimony adduced by respondent failed to lay the factual basis for respondents' claim that the manufacturer's suggested retail price was used for identification only and that the use of such prices was voluntarily discontinued under circumstances rendering the case moot.

22. William G. Hills, Executive Director of Electric Institute of Washington, described a display of appliances maintained by his "non-profit organization" which was organized "to promote the sale of products and services and to keep the public informed and educated on new developments in the industry and new uses of the products of the industry". The display on the ground floor of Potomac Electric Power Building in Washington contains a "representative line of practically all types of electrical products for the home". Each item is tagged to show: a description, the capacity, the manufacturer or suggested list price and a list of the association member retailers where the item may be purchased. If one of the 90,000 to 95,000 odd yearly visitors expresses an interest in an item, the hostess demonstrates it and gives the visitor a tag showing a place or places in the visitor's vicinity where the item may be purchased and the model number of the item. When asked whether the price was put on the tag handed to the visitor, Hills testified he did not know, and that the Institute was not interested in the price. The price might be placed on the tag attached to the appliance by either the manufacturer or a distributor depending on whose exhibit it was. Hills testified he had no knowledge of the actual selling price and that no study had been made of prices. Under such circumstances, the *manufacturer's* suggested list price seems to have little value as an identification of the item demonstrated.

23. David Galford who has been advertising manager of respondent George's Radio & Television Co., Inc., since September 8, 1959, testified that respondents had voluntarily ceased advertising a comparative price in October of 1960. On cross-examination, he stated that he had been instructed by respondent George Wasserman to withdraw an advertisement prepared to show such comparative prices on Friday, October 21, 1960. Galford was not aware that the complaint had been mailed October 18, 1960, (as shown by the Commission's records) and could not say whether the action of the company was voluntary except that Mr. Wasserman had told him that "inasmuch as a meeting had been held of some sort that he did not want any trouble".

24. The manufacturer's suggested retail prices are substantially higher than the prices at which stores of the same general character as respondents' in the Washington trade area have usually and

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customarily sold Westinghouse appliances for cash at retail in the recent regular course of business.

25. The use, without designation as such, of the manufacturer's suggested retail price in advertising in juxtaposition with lower price, tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold by the advertiser in the recent regular course of business.

26. The use with the designation "manufacturer's suggested list" price in advertising in juxtaposition with a lower price tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold in the trade area by stores comparable to that of the advertiser and that a saving will be made of the difference between the two prices.

27. There was no reliable proof that the use of the manufacturer's suggested retail price was solely for the purpose of identifying the type of appliance.

28. The use of the manufacturer's suggested retail price is not an effective or the usual manner of identifying a product which has other means of identification.

29. The fact that distributors as well as manufacturers suggested retail prices were placed on items in the Electric Institute of Washington display, makes the claim that the manufacturer's suggested retail prices were used by George's Radio & Television Company, Inc., to identify to prospective customers appliances observed at such display untenable.

30. There was no reliable evidence of voluntary discontinuance of the practice of advertising in the manner described in preceding findings prior to the issuance of the complaint.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter and of the persons of respondents.

2. This proceeding is in the public interest, and the facts found were established by reliable, probative and substantial evidence.

3. The use of a manufacturer's suggested retail price in advertising in commerce when such price is placed in juxtaposition with a lower price, constitutes an unfair or deceptive act or practice where such suggested retail price is neither the usual and customary price at which the advertiser sold in the recent regular course of business nor the usual and customary price of a fair cross section of other comparable stores in the same trade area. Contrary to respondents' contention, a written advertisement requires no public testimony as to its meaning.

The examiner in the first instance, and the Commission, should it disagree, are quite capable of determining what a reader might understand from the words and figures in the advertisements here under consideration. Even though the "trade" might not be confused, *Winsted Hosiery v. F.T.C.*, 258 U. S. 483 (1922), the Federal Trade Commission is empowered to prevent advertising calculated to mislead the public, *Zenith Radio Corporation v. F.T.C.*, 143 F. 2d 29 (C.A. 7 1944). The use of a manufacturer's suggested resale price in the free price area of Washington, where many buyers come from states which make the manufacturers price mandatory, is particularly susceptible of misconstruction. A young bride newly arrived from a state permitting rigid manufacturer price control might very well suppose that the usual price was that suggested by the manufacturer. She would thus prefer the advertiser comparing that price with his own, in the first instance, and would pass by another store offering the same merchandise at the same price because she was led by the advertisement to enter the store offering a "bargain". It has long been clear that if the first contact is procured by misleading, it makes no difference if the consumer is later informed of the truth. *F.T.C. v. Standard Education Society*, 302 U.S. 112. *Carter Products, Inc. v. F.T.C.*, 186 F. 2d 821, 824 (C.A. 7, 1951). It is equally clear that the Commission is as zealous of the rights of the unwary as of the sophisticated buyer. *Charles of the Ritz Distributors Corp. v. F.T.C.*, 143 F. 2d 676 (C.A. 2, 1944). *Bantam Books Inc. v. F.T.C.*, 275 F. 2d 680 (C.A. 2, 1960). Further, contrary to respondents' contention, it was not necessary to establish actual deception or to measure the trade deviation caused by the respondents' advertising, *In the Matter of Lafayette Brass Manufacturing Co.*, Docket No. 6671, September 27, 1960. *In the Matter of Main Street Furniture Inc.*, Docket No. 7786, Nov. 16, 1960. *In the Matter of the Baltimore Luggage Company, et al.*, Docket No. 7683, March 15, 1961.

Whatever the situation may be with respect to automobile pricing, Congress limited its enactment to remedying the abuses there found. Such remedy has no application here.

4. The use of a manufacturer's suggested retail price, without designation as such, in advertising in commerce, when such price is placed in juxtaposition with a lower price, constitutes an unfair or deceptive act or practice where the advertiser's usual and customary price made in the recent regular course of business has been less than the higher price.

5. The use of a manufacturer's suggested retail price, designated as such, in advertising in commerce when placed in juxtaposition with

a lower price constitutes an unfair or deceptive act or practice where the manufacturer's suggested retail price bears little relation to the usual and customary price of comparable stores in the same trade area. As the Commission recently pointed out in *The Baltimore Luggage Company, et al.*, Docket No. 7683, March 15, 1961, it is the trade area in which respondent operates that concerns the consumer. He wants to know that he is obtaining a bargain in the area in which he shops—not some other area.

6. Respondents use of the manufacturer's suggested retail price in advertising was not calculated to identify particular appliances, but rather to emphasize that respondents engaged in selling below a theoretical base price.

7. The case is not moot. The dismissal of complaints in abandonment cases is not the usual procedure and while the Commission is vested with discretion to determine whether or not a practice is surely stopped, where, as here, the practice continued until after the filing of the complaint and the respondents claim the right to continue, dismissal should not be ordered. *In the Matter of Arnold Constable Corporation*, Docket No. 7657, January 12, 1961, and cases cited therein. *In the Matter of Damar Products, et al.*, Docket No. 7769, May 3, 1961; *Art National Manufacturers Distributing Co., Inc., et al.*, Docket No. 7286, May 10, 1961; *Ward Baking Company v. F.T.C.*, 54 F.T.C., 1919 (1958).

8. Respondents have engaged in unfair or deceptive acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act through the use of manufacturer's suggested retail prices placed in juxtaposition in advertising with respondents' lower current prices.

9. The use of such acts and practices have had and now have the capacity and tendency to mislead members of the purchasing public into the erroneous belief that the lower prices quoted represent a saving in cost and thus into the purchase of appliances from respondents. As a consequence, substantial commerce may be diverted to respondents from their competitors causing them and the public substantial injury.

ORDER

It is ordered, That respondents, George's Radio and Television Company, Inc., a corporation, and its officers and George Wasserman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly, or as George's Warehouse Supermarts, or through any corporate or other device, in connection with the offering for sale, sale and distribution of electrical

appliances or any 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) Through the use of the term "Manufacturer's Suggested List" or any other term of the same import, or in any other manner, that any amount is the 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 said trade area.

(b) That any price, when accompanied or unaccompanied by any descriptive language, was the price at which the merchandise advertised was usually and customarily sold at retail by the respondents unless such advertised merchandise was in fact usually and customarily sold at retail at such price by the respondents in the recent past.

(c) That any saving is offered in the purchase of merchandise from the respondents' price or the price in the respondents' trade area unless the price at which the merchandise is offered constitutes a reduction from the price at which said merchandise is usually and customarily sold at retail by the respondent or at which said merchandise is usually and customarily sold at retail in said trade area.

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 by the respondents or in the trade area or areas where the representations are made.

OPINION OF THE COMMISSION

By DIXON, *Commissioner*:

Respondents were charged by the complaint in this proceeding with false representations as to price in violation of Section 5 of the Federal Trade Commission Act. The hearing examiner in his initial decision filed June 29, 1961, found that the charges were sustained by the record and ordered respondents to cease and desist the challenged practices. Respondents have appealed, raising questions as to the sufficiency of the evidence and as to certain conclusions drawn by the examiner.

There is no dispute about the essential facts in this case except with reference to the usual and customary prices of the advertised products in the Washington trade area, a point to be further discussed hereafter. Respondents are engaged in the advertising, offering for sale and sale of electrical appliances and other merchandise at retail to the

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public under the name "George's Warehouse Supermarts" (hereinafter referred to as George's). In the course of their business, respondents advertised in the Washington Post and Times Herald and the Evening Star newspapers in Washington, D.C., at various times in 1959, making the following representations:

429.95 Westinghouse Laudromat Washer Dryer Combination—\$239.
269.95 Westinghouse Automatic Washer—\$136 or \$134.
669.95 16 cu. ft. Two Door Refrigerator Freezer—Westinghouse—\$399.
549.95 Westinghouse 17.6 cu. ft. Upright Freezer—\$288 or \$284.
429.95 Westinghouse 14.8 cu. ft. Upright Freezer—\$227 or \$217.
Mfr's Sug. List \$499.95 Westinghouse 12.1 cu. ft. 2 Door Refrigerator-Freezer—\$249.

The complaint alleged that through the use of these and other similar statements, respondents represented:

1. That the higher stated prices, when unaccompanied by any descriptive language, were the prices at which the merchandise advertised was usually and customarily sold at retail by the respondents in the recent regular course of business.
2. That the amount designated as "Mfr's. Sug. List" was the price at which the merchandise advertised was usually and customarily sold at retail in the trade area where the representations were made.
3. That purchasers of the products advertised were afforded savings of the differences between the higher stated prices unaccompanied by a descriptive language or the amount, designated "Mfr's. Sug. List," and the advertised sales prices.

It was further alleged that such statements and representations were false, misleading and deceptive because the higher prices were substantially in excess of what they were represented to be and purchasers were not afforded the savings represented.

The hearing examiner found in part that the use of the manufacturer's suggested retail price with the designation "manufacturer's suggested list" (abbreviated "Mfr's Sug. List") in advertising in juxtaposition with a lower price tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold in the trade area by stores comparable to that of the advertiser when in fact such price is substantially higher than the prices at which stores of the same general character as respondents' in the Washington trade area have usually and customarily sold Westinghouse appliances for cash at retail in the recent regular course of business.

While this holding is essentially sound, we think it unduly restrictive in one minor respect. That is, it should not have been limited only to stores "comparable" to George's. The representation "Mfr's.

Sug. List" creates the impression that there is a usual and customary retail price for the product in the trade area, and that that price is the specified "Mfr's. Sug. List" price. The soundness of this interpretation is settled law. See *Clinton Watch Co. v. Federal Trade Commission*, 291 F. 2d 838 (7th Cir. 1961); *Baltimore Luggage Co. v. Federal Trade Commission*, 296 F. 2d 608 (4th Cir. 1961). Substantial probative evidence in the record here shows that the products in question were being widely sold in the trade area at a variety of retail prices significantly lower than the higher comparative prices advertised by respondents. It is clear from the record that the instances in which certain retailers sold at or above the manufacturer's suggested prices were exceptions rather than the general rule. The hearing examiner found to this effect and we agree. We therefore reject respondents' contentions as to the sufficiency of the evidence and the conclusions to be drawn therefrom on this question. The initial decision will be modified to conform to our views.

We additionally note that the hearing examiner has not clearly found that respondents represented in their advertising a saving to purchasers in those instances in which the higher price was not designated as manufacturer's suggested list. Furthermore, he has failed to clearly find that the savings represented in all cases would not be realized by purchasers of the products. The initial decision will also be modified to correct these deficiencies.

Misrepresentation as to the usual and customary retail prices of articles and the savings to be obtained over such usual prices by those selling to the ultimate consumer has been challenged and prohibited by the Commission in a number of cases.

In *Macher Watch & Jewelry Co., etc.*, 32 F.T.C. 763 (1941), the Commission prohibited, *inter alia*, representations that respondents' prices represent any substantial discount from the customary retail prices of such merchandise. In *Plaza Luggage & Supply Co., Inc., et al.*, 44 F.T.C. 443 (1948), the Commission in prohibiting price misrepresentation held that respondents' so-called catalog or list prices were not prices at all but arbitrarily fixed amounts which, when reduced by the stated discounts, were approximately the regular and customary prices. Using the term "List Price" or any other term of similar import or meaning to refer to prices not the bona fide regular established selling prices of tires and tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business was ordered prohibited by the Commission in the following cases: *The Firestone Tire & Rubber Co., et al.*, 33 F.T.C. 282 (1941); *The Goodyear Tire & Rubber Co., et al.*, 33 F.T.C. 298

(1941); *The B. F. Goodrich Company*, 33 F.T.C. 312 (1941); and *Sears, Roebuck & Co.*, 33 F.T.C. 334 (1941). Additional Commission cases involving the use of fictitious prices or price misrepresentation include *Maxwell Distributing Co., Inc., et al.*, 54 F.T.C. 260 (1957); *Hutchinson Chemical Corp., et al.*, 55 F.T.C. 1942 (1959); *Bond Stores, Inc.*, Docket No. 6789 (January 7, 1960); *Arnold Constable Corporation*, Docket No. 7657 (January 12, 1961); *Art National Manufacturers Distributing Co., Inc., et al.*, Docket No. 7286 (May 10, 1961); and many others.

The courts have upheld the Commission orders banning fictitious pricing practices and the making of false savings claims. *L. & C. Mayers Co., Inc. v. Federal Trade Commission*, 97 F. 2d 365 (2nd Cir. 1938); *Consumers Home Equipment Co., et al. v. Federal Trade Commission*, 164 F. 2d 972 (6th Cir. 1947); *Niresk Industries, Inc., et al. v. Federal Trade Commission*, 278 F. 2d 337 (7th Cir. 1960), *cert. denied* 364 U.S. 883 (1960); *Kalwajtys, et al. v. Federal Trade Commission*, 237 F. 2d 654 (7th Cir. 1956), *cert. denied* 352 U.S. 1025 (1957); *Progress Tailoring Co. v. Federal Trade Commission*, 153 F. 2d 103 (7th Cir. 1946); *Clinton Watch Company, et al. v. Federal Trade Commission, supra*.

The use by the respondents in this case of manufacturers' suggested list prices and other higher prices in comparison with lower advertised sales prices were misrepresentations as to usual and customary prices and as to savings afforded purchasers and were unfair acts or practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. See *Clinton Watch Company, et al. v. Federal Trade Commission*, 291 F. 2d 838 (7th Cir. 1961), where the court, at page 840, stated that misrepresentation as to the retail value of merchandise by means of an attached fictitious price and deception as to savings afforded by the purchase of the product at a substantially lower price than that indicated thereon constitute unfair methods of competition.

The argument to the effect that the Automobile Information Disclosure Act, Public Law 85-506, 72 Stat. 325 (1958), indicates Congressional approval of the type of practice here engaged in is rejected. See *The Baltimore Luggage Company, et al. v. Federal Trade Commission, supra*.

Respondents' appeal is denied. The hearing examiner's initial decision, except as modified to conform to the views of the Commission herein expressed, will be adopted as the decision of the Commission. An appropriate order will be entered.

Order

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having rendered its decision denying respondents' appeal and directing that the initial decision, except as modified to conform to the Commission's views therein expressed, be adopted as the decision of the Commission:

It is ordered, That paragraphs 13 and 24 of the findings of fact in the initial decision be, and they hereby are, stricken.

It is further ordered, That paragraphs 25 and 26 of the findings of fact in the initial decision be, and they hereby are, redesignated 24 and 25, respectively, and modified to read as follows:

"24. The use, without designation as such, of the manufacturer's suggested retail price in advertising in juxtaposition with a lower price, represents and tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold by the advertiser in the recent regular course of business and that a saving will be made of the difference between the two prices.

"25. The use with the designation "Mfrs. Sug. List" or "Manufacturer's Suggested List" price in advertising in juxtaposition with a lower price represents and tends to lead readers of such advertising to believe that the higher price is the price at which the merchandise is usually and customarily sold in the Washington trade area and that a saving will be made of the difference between the two prices."

It is further ordered, That a new paragraph, designated 26, be, and it hereby is, inserted in the findings of fact in the initial decision immediately following redesignated paragraph 25, as follows:

26. The "Manufacturer's Suggested List" prices of Westinghouse, including those contained in the advertisements set out in Finding No. 7, whether so designated or not, are substantially higher than the prices at which stores in the Washington trade area have usually and customarily sold the Westinghouse appliances to which they refer. Purchasers of the advertised products were not afforded savings of the differences between the higher stated prices, unaccompanied by any descriptive language, or the amount designated "Mfrs. Sug. List" and the advertised lower sales prices.

It is further ordered, That the first sentence of the first subparagraph of paragraph 3 of the conclusions in the initial decision be, and it hereby is, modified to read as follows:

Syllabus

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The use of a manufacturer's suggested retail price, so designated, in advertising in commerce when such price is placed in juxtaposition with a lower price, constitutes an unfair or deceptive act or practice where such suggested retail price is not in fact the price at which the merchandise is usually and customarily sold in the trade area. The use of such a price, without designation, constitutes an unfair or deceptive act or practice where such price is not the usual and customary price at which the advertiser sold in the recent regular course of business.

It is further ordered, That the first sentence of paragraph 5 of the conclusions in the initial decision be, and it hereby is, modified by striking therefrom the word "comparable".

It is further ordered, That paragraph 9 of the conclusions in the initial decision be, and it hereby is, modified by inserting at the end the following new sentence: Respondents, therefore, have also engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act.

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the 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.
