

disclosed.
8. Furnishing to others any means or instrumentalities by and through which they may misrepresent the origin, composition, guarantee or usual and customary retail prices of respondents' merchandise.

It is further 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 this order.

IN THE MATTER OF

ALAN HOFBERG ET AL. DOING BUSINESS AS HOBART
STEEL COMPANY, ETC.

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

Docket C-88. Complaint, Mar. 2, 1962—Decision, Mar. 2, 1962

Consent order requiring a North Hollywood, Calif., partnership to cease using false offers of employment, deceptive pricing and guarantee claims and other misrepresentations to sell their waterless cookware, in letters and other promotional material sent to prospective purchasers and in newspaper advertisements.

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 Alan Hofberg and Norman Best, as individuals and as copartners doing business as Hobart Steel Company and as Western States Claim Adjusters, herein-after 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. Respondents Alan Hofberg and Norman Best are individuals and are copartners doing business under various trade names including Hobart Steel Company and Western States Claim Adjusters. Their principal office and place of business is located at 5653 Lankershim Boulevard, North Hollywood, Calif.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution of a variety of products,

including waterless cookware, to retailers and others for resale to the public and to members of the purchasing public.

PAR. 3. Respondents, in the course and conduct of their business, ship their said products from their place of business in the State of California to purchasers thereof located in various other states of the United States. Respondents also ship their merchandise to public warehouses and storage companies located in various states other than the State of California for storage and sale to members of the purchasing public located in various other states of the United States.

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

PAR. 4. Respondents, in the course and conduct of their business, are engaged in substantial competition in commerce with corporations, firms, and individuals engaged in the sale and distribution of waterless cookware and other products.

PAR. 5. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their said products, advertise by means of form letters, circulars and promotional material, sent to prospective purchasers, and by means of advertisements inserted in newspapers and other periodicals of general circulation.

PAR. 6. Among and typical, but not all inclusive, of the statements and representations appearing in said advertisements are the following:

In the Ardmore, Oklahoma, "DAILY ARDMOREITE" issue of April 4, 1960, under the classified heading: "HELP—MALE & FEMALE":

COOKWARE Waterless 17 pc. Set 3-ply Stainless. Sells for \$199. Your sample set \$48.60

In the Columbia, Missouri, "TRIBUNE" issue of August 10, 1960, under the classified heading: "ARTICLES FOR SALE":

MUST LIQUIDATE Brand new 17 piece stainless steel waterless cookware sets. Sells for \$200, take \$45.00. See at Benton Moving & Storage

PAR. 7. Among and typical, but not all inclusive, of the statements and representation set forth in respondents' form letters, circulars, and promotional material, are the following:

RE: *UNCLAIMED FREIGHT* Dear Sir: This letter is being sent to you in regards to an unclaimed shipment of stainless steel waterless cookware sets now being held at (Name of local warehouse) . . . this shipment can be released to you for the C.O.D. balance only. These sets are sold exclusively on The-Home-Dinner-Party-Plan for \$199.50 . . . This entire shipment has been released as *UNCLAIMED FREIGHT* for \$45.00 per set

CLAIM #574036 ACCOUNT: HOBART STEEL COMPANY Gentlemen: We have on hand at our Los Angeles warehouse 2,178, cartons of stainless steel waterless cookware . . . These sets must be disposed of immediately to settle a claim against Hobart Steel Co. In the past, unclaimed sets . . . were disposed of through transfer and storage houses by placing a small ad in the classified section of their local newspaper . . . (There is set forth what purports to be a suggested form of advertisement, under the classified heading: FREIGHT DISPOSAL . . . Sells for \$200. Sacrifice for \$65 . . . ") This is Hobart Steel Company's finest . . . and carry a full guarantee from the manufacturer. These sets are available for immediate delivery at \$35.00 per set. (Signed) Arnold Whittaker WESTERN STATES CLAIM ADJUSTERS.

PAR. 8. Through the use and by means of the foregoing statements, and others of similar import not specifically set forth herein, respondents represented, and now represent, directly or by implication:

- (a) That respondents were soliciting for prospective employees.
- (b) That said products are distress merchandise and must be sold, and were from a business in the state of liquidation.
- (c) That said products were unclaimed freight and would be sold for the balance due for freight or storage charges thereon.
- (d) That said products are usually and customarily sold by respondents for \$199.50 (or \$200.00).
- (e) That said products were being offered at a special reduced price of \$45.00 (or of \$35.00, or \$48.60).

PAR. 9. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact:

- (a) Respondents were not soliciting for prospective employees and have not employed persons responding to said advertisements. To the contrary, respondents were soliciting for sales of their said products.
- (b) The said products were not distress merchandise and respondents did not have to sell them, nor were such products from a business in the state of liquidation. To the contrary, respondents sold substantial quantities of such products in this manner.
- (c) The price at which respondents offered such sets of cookware did not constitute only the balance due for freight and storage charges on each set. To the contrary, such sets were being offered at prices in excess of respondents' freight and storage costs.
- (d) Said products have never been sold by respondents for \$199.50 (or for \$200.00). To the contrary, the said prices are greatly in excess of the prices usually and customarily charged by respondents for such products in the usual course of their business.
- (e) Said products were not being offered for sale by respondents at special or reduced prices. To the contrary, the said prices were

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those usually and customarily charged by respondents in the usual course of their business.

PAR. 10. Respondents, in the course and conduct of their business as aforesaid, sent brochures and other promotional material to prospective purchasers of their said products. Among and including, but not limited to, the said material sent by respondents is a brochure which illustrates and describes their waterless cookware. Said brochure purports to depict respondents' guarantee form, utilizing such type and format that the only conspicuous word in the said brochure is the word "GUARANTEE". Said brochure also contains the statement: "FACTORY GUARANTEE and full color recipe and instruction book included." Furthermore, certain of respondents' form letters, as aforesaid, contain reference to a "full guarantee from the manufacturer".

The actual guarantee form or document included with the sets of waterless cookware, when sold and distributed by respondents as aforesaid, sets forth under the word "GUARANTEE" the following: "This Waterless Cookware set is guaranteed to be free of manufacturing defects. . . ." None of the other matter set forth in the said form or otherwise provided to purchasers of said products, sets forth the provisions, terms, conditions or limitations of such guarantee.

PAR. 11. The said statements, representations, and depictions concerning respondents' guarantee are false, misleading, and deceptive. The guarantee form or document furnished to purchasers of respondents' said products does not set forth the nature or extent of any guarantee nor of any limitations or conditions upon such guarantee. Furthermore, neither the name of the guarantor nor the manner in which the guarantor undertakes to perform under said guarantee are disclosed therein.

PAR. 12. By the aforesaid practices, respondents place in the hands of retailers and others means and instrumentalities by and through which they may mislead the public as to the nature of and the usual and customary prices of the said products.

PAR. 13. The use by respondents of the foregoing false and misleading statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were, and are, true and to induce a substantial portion of the purchasing public, because of such mistaken and erroneous beliefs, to purchase such products.

PAR. 14. 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 methods of competition, in commerce, and unfair acts and practices, in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Alan Hofberg and Norman Best are individuals and are copartners doing business under various trade names including Hobart Steel Company and Western States Claim Adjusters. Their principal office and place of business is located at 5653 Lankershim Boulevard, North Hollywood, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Alan Hofberg and Norman Best, as individuals or as copartners doing business as Hobart Steel Company, Western States Claim Adjusters, or under any other trade name or names, 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 waterless cookware or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

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1. (a) That employment is being offered, when in fact the purpose or effect of such representation is the solicitation of sales of such products.

(b) That such products are distress merchandise, or must be sold, or are from the stock of a business in the state of liquidation.

(c) That such products are unclaimed freight, or that they are being offered for the balance due for freight, storage, or other charges thereon.

(d) That any amount is respondents' usual and customary price of merchandise when it is in excess of the price at which the merchandise has been usually and customarily sold by respondents in the recent, regular course of business.

(e) That any price is a reduced price unless it constitutes a reduction from the price at which respondents have usually and customarily sold such merchandise in the recent regular course of their business.

(f) That such products are guaranteed, unless the nature, extent, terms, and conditions of such guarantee, the name of the guarantor, and the manner and form in which the guarantor will perform thereunder, are clearly set forth.

2. Placing in the hands of others the means and instrumentalities by and through which they may mislead the public as to any of the matters set forth in paragraph 1 above.

It is further 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 this order.

IN THE MATTER OF

GOODSTEIN BROTHERS & COMPANY, INC., ET AL.