

Complaint

IN THE MATTER OF
ESTEE SLEEP SHOPSORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8527. Complaint, Aug. 22, 1962—Decision, Jan. 16, 1963*

Order dismissing—it being determined that the consent order procedure should be made available to the parties named in a proposed amendment—complaint charging advertising of fictitious prices and deceptive guarantees of furniture, after it was found that the original respondent was nonexistent and the activities concerned were those of several corporations and their officers.

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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 Estee Sleep Shops, a corporation, hereinafter referred to as respondent, has 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 Estee Sleep Shops is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office at 2400 West 21st Street in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of manufacturing bedding, selling bedding as a wholesaler, assembling furniture, and selling bedding and furniture through nine retail stores owned and operated by Estee Sleep Shops.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Illinois to purchasers thereof located outside that State, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the sale of said bedding and furniture, respondent has placed or caused to be placed advertisements in newspapers of general circulation. The following statements from the advertisements are typical but not all inclusive:

Kroehler Foam Cushioned Sofa and Chair Save \$60 Decorator designed * * *
Get yours today at Estee, only \$149.88

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3-Pc. Bedroom Suite * * * At Estee, yours for only \$149.88. Save \$60
 Handsome Decorator Living Room 2-Piece Sofa and Chair Suite \$139.95.
 Save \$45

Imported Danish Style Room Group for Easy Relaxation:

Foam Lounge-----	\$79.95	} ALL FOR ONLY \$119.88
Armchair-----	39.95	
Rocker-----	49.95	
60" Slat Bench-----	19.95	
Total-----	\$189.80	
You pay only-----	119.88	
	\$69.92	

PAR. 5. Through the use of the aforesaid statements the respondent has represented, directly or indirectly, that:

1. The respondent usually and customarily sold the Kroehler foam cushioned sofa and chair for \$209.88 in the recent regular course of its business and that a saving would be made of \$60.

2. The respondent usually and customarily sold the three piece bedroom suite for \$209.88 in the recent regular course of its business and that a saving would be made of \$60.

3. The respondent usually and customarily sold the two piece sofa and chair suite for \$184.95 in the recent regular course of its business and that a saving would be made of \$45.

4. The respondent usually and customarily sold the Danish style room group for \$189.80 in the recent regular course of its business and that a saving would be made of \$69.92.

PAR. 6. In truth and in fact the respondent has not regularly sold the items listed in Paragraph 5 at the prices stated therein and the savings stated therein would not be made. Therefore the statements and representations referred to in Paragraphs 4 and 5 are false, misleading and deceptive.

PAR. 7. In the course and conduct of its business the respondent has made the following guarantee statements in its newspaper advertisements of its mattresses:

- * 5 Year Guarantee
- * 5 Year Written Guarantee
- * 15 Year Guarantee
- * 10 Year Guarantee
- * 10 Year Written Guarantee

A footnote to these statements in each advertisement explains, "should mattress become unserviceable to original purchaser from normal use, free repairs will be made".

PAR. 8. In truth and in fact the purchaser must:

1. Fill out and mail in the guarantee stub which accompanies a mattress to the respondent within thirty days of purchase.
2. Use the mattress on an Estee foundation.
3. Pay all costs of transportation and handling.

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These facts are not disclosed in the respondent's advertising. Therefore the statements and representations referred to in Paragraph 7 are false, misleading and deceptive.

PAR. 9. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of bedding and furniture of the same general kind and nature as that sold by respondent.

PAR. 10. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices 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 quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

ORDER DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon certification by the hearing examiner of complaint counsel's application for amendment of the complaint and respondent's answer in opposition thereto; and

It appearing that subsequent to the issuance of the complaint it has been determined that the corporation named as respondent therein is nonexistent but that the activities dealt with in said complaint are those of several corporations and their officers acting individually and in their official capacities; and

It further appearing that the primary purpose for the requested amendment, and the basis for the hearing examiner's certification, is to permit the substitution of the several corporations and the individuals as parties respondent, together with the addition of certain allegations as to corporate and individual relationship and responsibility and as to interstate commerce not previously alleged; and

The Commission having found upon its consideration of all information available to it that it has reason to believe that the ten corporations and four persons named as respondents in the proposed amended complaint have violated Section 5 of the Federal Trade Commission Act through the acts and practices challenged therein; and

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The Commission having determined that a proceeding with respect to said acts and practices is required in the public interest but that the consent order procedure should be made available to the parties named in the proposed amendment and that for this reason the complaint herein should be withdrawn for the purpose of redrafting in accordance with the proposed amendments and for reservice:

It is ordered, That the complaint in this matter be, and it hereby is, dismissed without decision on the merits and without prejudice to the Commission's right to summarily issue a new complaint covering the same or substantially similar alleged facts.

It is further ordered, That a copy of the complaint, redrafted in accordance with the proposed amended complaint, be served on the parties named therein pursuant to Part 3 of the Commission's Rules of Practice.