

IN THE MATTER OF

L & M INTERNATIONAL, INC., ET AL.

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

Docket 8488. Complaint, June 4, 1962—Decision, Feb. 5, 1963

Order requiring St. Louis mail order distributors of electrical appliances, small tools, and other household items, to cease making such deceptive pricing and savings claims in newspaper and magazine advertising and in their catalog as, for example, "Giant 12-inch Automatic Electric Skillet Reg. \$39.95—\$9.95", when \$39.95 was not the regular retail price and customers did not save the difference between the two figures; and "Giant Plastic Sheet 1¢ * * * when you buy another * * * for 99¢" when they did not offer two sheets for the price of one plus one cent.

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 L & M International, Inc., a corporation, and Marcus Rosenfeld and Leon Rosenfeld and Isadore Rosenfeld, 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 the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Marcus Rosenfeld, Leon Rosenfeld and Isadore Rosenfeld have been continuously engaged in the business hereinafter described since its inception. Initially the business was conducted by them as partners trading as L & M Company. The partnership was succeeded by L & M International, Inc., a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 415 North Eighth Street, in the city of St. Louis, State of Missouri. It does business as L & M Company.

Respondents Marcus Rosenfeld, Leon Rosenfeld and Isadore Rosenfeld are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various household items, including home electrical appliances and small tools. Respondents sell by mail directly to the public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, 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. 4. In the course and conduct of their business as aforesaid, respondents have made statements in newspapers and magazines of national circulation and in their catalog respecting the prices of certain of their products of which the following are typical:

GIANT 12-INCH AUTOMATIC ELECTRIC SKILLET

Reg. \$39.95—\$9.95

GIANT PLASTIC SHEET 1¢—Others charge \$1.00 for 9 x 12 (108 sq. ft.) tough, transparent plastic sheet, but our price is only One Cent each when you buy another same size and exactly the same quality sheet for 99¢

PAR. 5. Through the use of the aforesaid statements respondents represented directly or indirectly:

1. That the price designated "Reg." was respondents' usual and customary retail price in the recent, regular course of business of the automatic electric skillet and that savings afforded to purchasers in the purchase of that item amounted to the difference between \$39.95 and \$9.95.

2. That two plastic sheets of the same size and quality may be purchased for respondents' established price of 99¢ for one of such plastic sheets, plus one cent.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact:

1. The "Reg." price of \$39.95 is not the respondents' usual and customary retail price in the recent, regular course of business of the electric skillet, and savings amounting to the difference between \$39.95 and \$9.95 are not afforded to purchasers.

2. Respondents' established price of one of said plastic sheets is not 99¢ but is a lower price and respondents are not offering two of said plastic sheets for the usual price of one, plus one cent.

PAR. 7. Respondents have made statements in advertisements in connection with offering their merchandise for sale, such as: "We guarantee to please you—or your money cheerfully refunded", "Satisfaction guaranteed or your money cheerfully refunded", "Satisfaction guaranteed or your money cheerfully refunded in 10 days", thereby representing directly or indirectly that the purchase price, when requested by a customer, would be refunded voluntarily and within ten days.

PAR. 8. Said statements and representations were false, misleading and deceptive. In truth and in fact, said respondents in certain instances failed and neglected to refund the purchase price to customers when requested, and frequently such refunds were made only after the Better Business Bureau or Post Office Department had made inquiries of said respondents at the instance of customers regarding respondents' failure to honor their refund guarantee.

PAR. 9. 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 household items of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents 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 state-

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ments and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. 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 and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. Charles W. O'Connell supporting the complaint.

Mr. Selden Blumenfeld, of *Blumenfeld, Abrams & Daniel*, of St. Louis, Mo., for respondents.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

NOVEMBER 16, 1962

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on June 4, 1962, issued its complaint charging L & M International, Inc., a corporation, and Marcus Rosenfeld, Leon Rosenfeld and Isadore Rosenfeld, individually and as officers of said corporation, with violation of Section 5 of the Federal Trade Commission Act.

The complaint alleges respondents to have been engaged for some time last past in the interstate sale by mail directly to the public of various household items, including home electrical appliances and small tools. It is further alleged that respondents advertised said products in a catalog as well as newspapers and magazines of national circulation and that in such advertisements and contrary to the facts, respondents represented that the purchase prices being therein offered were lower than the respondents' regular, usual and customary higher prices for such products in the recent regular course of business, and that the difference between the said lower prices and the said higher prices shown, would be a savings in such monetary amounts to the purchaser of such products. It was also alleged that respondents in said advertisements made false, misleading and deceptive guarantee statements and representations as to purchase price refunds given to dissatisfied customers.

Joint answer to the complaint was filed on June 18, 1962, by respondents Marcus Rosenfeld and Leon Rosenfeld which in effect admits all the material allegations of the complaint except those directed to the alleged guarantee misrepresentations in Paragraphs 7 and 8 of the complaint which were denied. Said answer also denies

respondent Isadore Rosenfeld to have participated in the formulation, direction and control of the policies, acts and practices of the corporate respondent, L & M International, Inc., but admits that respondents Marcus and Leon Rosenfeld formulated, directed and controlled the policies, acts and practices of said corporate respondent. Answer and affidavit by respondent Isadore Rosenfeld that he never had any active connection with the corporate respondent, and that he had no knowledge of the matters pleaded in the complaint, and asking that the complaint be dismissed as to him was filed herein on July 2, 1962.

No answer was filed by the corporate respondent, L & M International, Inc., and it is accordingly in default and subject to the provisions of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, Part 4, Section 4.5(c).

Following a prehearing conference held on August 8, 1962, and made part of the public record herein by agreement of both counsel, counsel for respondents submitted an affidavit dated September 12, 1962, by respondent Marcus Rosenfeld together with a second affidavit and attachments thereto also by respondent Marcus Rosenfeld and dated September 12, 1962.

The first affidavit recites that respondent Isadore Rosenfeld was elected an officer and director of the corporate respondent L & M International, Inc., in his absence, and that he attended no meetings from such first meeting of the shareholders and directors of said respondent corporation until his resignation as an officer and director on November 30, 1961. This first affidavit further recites that respondent Isadore Rosenfeld transacted no business for the respondent corporation, had nothing whatsoever to do with the establishment of its methods of doing business, and still further, that on or about April 27, 1962, the said respondent corporation made an assignment for the benefit of its creditors and has transacted no business since said date.

The second affidavit by respondent Marcus Rosenfeld summarizes various attachments to said affidavit consisting of a typewritten compilation and numerous photostat copies of cancelled bank check statements by the First National Bank of St. Louis, Missouri, entitled L & M Company Refund Account. This affidavit shows the total number and the total dollar amount of purchase price refunds made to customers during the calendar years 1960, 1961 and the first 4 months of 1962, and discloses that during such time period 16,987 refunds totaling \$69,191.66 were made by said corporate respondent.

Based on the foregoing, counsel supporting the complaint filed a motion to dismiss the complaint as to respondent Isadore Rosenfeld and to dismiss Paragraphs 7 and 8 of the complaint alleging refund guarantee misrepresentations. Said motion states that the evidence on

which the charges of the complaint in such respect were based is not sufficient to prevail over the opposing evidence since available and proposed to be offered by respondents.

In conjunction with said motion, counsel supporting the complaint and counsel for respondents executed and submitted a stipulation to be made a part of the record herein in lieu of evidence in support of and opposition to the complaint. Said stipulation sets forth the facts and conclusions as to which both counsel are in agreement and states that the hearing examiner may proceed thereon to make findings of fact and conclusions without the necessity of counsel filing proposed findings, briefs, or presentation of argument. The stipulation also contains an agreed upon proposed order to cease and desist which parallels the proposed order to cease and desist contained in the complaint with the exception of the dismissal of respondent Isadore Rosenfeld and paragraph 7 and 8 of the complaint.

By order of the hearing examiner dated November 5, 1962, it was directed that the first affidavit of respondent Marcus Rosenfeld dated September 12, 1962; the second affidavit by said respondent with attachments also of the same date; and the stipulation executed on October 3, 1962, between counsel supporting the complaint and counsel for respondents be filed of record herein. The motion of counsel supporting the complaint entitled Motion to Dismiss Complaint as to One of the Respondents and as to Certain of the Charges Therein was reserved for final disposition in the initial decision herein.

After carefully reviewing the entire record in this proceeding as hereinbefore described, and based on such record, the following findings of fact and conclusions therefrom are made, and the following order issued.

FINDINGS OF FACT

1. Respondents Marcus Rosenfeld and Leon Rosenfeld have been continuously engaged in the business hereinafter described since its inception. Initially the business was conducted by them as partners trading as L & M Company. The partnership was succeeded by L & M International, Inc., a corporation, organized existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 415 North Eighth Street, in the city of St. Louis, State of Missouri. It does business as L & M Company.

2. Respondents Marcus Rosenfeld and Leon Rosenfeld are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including the

acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent. Affidavits of record herein by respondents Marcus Rosenfeld and Isadore Rosenfeld show that respondent Isadore Rosenfeld until his resignation on November 30, 1961, was but a nominal officer and director of respondent L & M International, Inc., and at no time participated in the formulation, direction and control of its policies, acts and practices, or transacted any business for said corporate respondent. The order herein will on such basis provide for the dismissal of the complaint as to respondent Isadore Rosenfeld. Reference to respondents hereinafter shall mean respondents Marcus Rosenfeld, Leon Rosenfeld and the corporate respondent L & M International, Inc.

3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various household items, including home electrical appliances and small tools. Respondents sell by mail directly to the public.

4. In the course and conduct of their business, respondents now cause and for some time last past have caused their said products, when sold, to be shipped from their place of business in the State of Missouri to purchasers thereof located in various other States of the United States, 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.

5. In the course and conduct of their business as aforesaid, respondents have made statements in newspapers and magazines of national circulation and in their catalog respecting the prices of certain of their products of which the following are typical:

GIANT 12-INCH AUTOMATIC ELECTRIC SKILLET

Reg. \$39.95 — \$9.95

GIANT PLASTIC SHEET 1¢—others charge \$1.00 for 9x12 (108 sq. ft.) tough, transparent plastic sheet, but our price is only One Cent each when you buy another same size and exactly the same quality sheet for 99¢.

6. Through the use of the aforesaid statements respondents represented directly or indirectly:

a. That the price designated "Reg." was respondents' usual and customary retail price in the recent, regular course of business of the automatic electric skillet and that savings afforded to purchasers in the purchase of that item amounted to the difference between \$39.95 and \$9.95.

b. That two plastic sheets of the same size and quality may be purchased for respondents' established price of 99¢ for one of such plastic sheets, plus one cent.

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7. Said statements and representations are false, misleading and deceptive. In truth and in fact:

a. The "Reg." price of \$39.95 is not the respondents' usual and customary retail price in the recent, regular course of business of the electric skillet, and savings amounting to the difference between \$39.95 and \$9.95 are not afforded to purchasers.

b. Respondents' established price of one of said plastic sheets is not 99¢ but is a lower price and respondents are not offering two of said plastic sheets for the usual price of one, plus one cent.

8. 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 household items of the same general kind and nature as those sold by respondents.

9. The use by respondents 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 respondents' products by reason of said erroneous and mistaken belief.

10. Affidavits of record herein by respondent Marcus Rosenfeld, disclose the corporate respondent to have maintained a refund account in the First National Bank of St. Louis, Missouri and to have made 16,987 refunds to customers totaling \$69,191.66 during 1960, 1961, and the first 4 months of 1962. This evidence further shows the corporate respondent to have made an assignment for the benefit of creditors on April 27, 1962, and to have transacted no business from such date. No countervailing evidence having been offered, the allegations in Paragraph 7 and Paragraph 8 of the complaint as to refund guarantee misrepresentations are without record support and the order herein will on such basis provide for the dismissal of the charges contained in Paragraphs 7 and 8 of the complaint without prejudice.

CONCLUSIONS

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

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The aforesaid acts and practices of respondents, as hereinbefore found and set forth in Paragraphs 1 through 9 of the Findings of Fact, 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 and deceptive acts

and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That L & M International, Inc., a corporation, and its officers, and Marcus Rosenfeld and Leon Rosenfeld, 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, and 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 any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price at which such merchandise has been usually and customarily sold by respondents at retail in the recent, regular course of business.

2. Using the word "Reg." or any other term of similar import or meaning to describe or refer to the retail price of merchandise when such amount 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.

3. Representing, through the device of a one cent sale, or in any other manner, that two units of respondents' merchandise may be purchased for the price of one unit, plus one cent, or other amount, when the price of one unit of said merchandise is in excess of the price at which it is usually and customarily sold by respondents.

4. Representing, directly or by implication that any savings are afforded from respondents' usual and customary retail prices in the purchase of merchandise unless the price at which it is offered is lower than the price at which it has been sold by respondents in the recent, regular course of business.

5. Misrepresenting in any manner the savings available to purchasers of respondents' merchandise, or the amount by which the price of merchandise has been reduced from the price at which it is customarily sold by respondents in the usual course of their business.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Isadore Rosenfeld.

It is further ordered, That the charges in Paragraph 7 and Paragraph 8 of the complaint be, and they hereby are, dismissed without prejudice.

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FINAL ORDER

The Commission by its order of December 26, 1962, having placed this case on its docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed November 16, 1962, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents L & M International, Inc., a corporation, and Marcus Rosenfeld and Leon Rosenfeld 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.
