

not been met and complied with; and Commissioner MacIntyre not participating.

IN THE MATTER OF
ARTHUR KRAUSS ET AL. TRADING AS JOB LOT
TRADING CO.

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

Docket C-491. Complaint, Apr. 17, 1963—Decision, Apr. 17, 1963

Consent order requiring New York City sellers of sporting goods, hardware, navigational equipment, etc., to cease representing falsely in advertisements in newspapers, in brochures and other advertising matter that amounts used in connection with the terms "MFR LIST PRICE", "LIST PRICE", and "comparative list value" were the usual prices for their merchandise in the area referred to and that purchasers would realize savings by buying at the lower advertised price; and that their merchandise was "Fully guaranteed" with a "15 day money back guarantee".

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 Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss, individuals and

partners trading as Job Lot Trading Co., 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 Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss are individuals and are partners trading as Job Lot Trading Co. with their principal office and place of business located at 43 Vesey Street in the city of New York, State of New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sporting goods, hardware, navigational equipment, paints, binoculars, telescopes, microscopes and other articles of merchandise.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business in the State of New York 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 merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their merchandise, respondents have made certain statements and representations with respect thereto, in advertisements inserted in newspapers, in brochures and through other advertising media of which the following are typical but not all inclusive.

Binolux binoculars

Model No. 4020—MFR LIST PRICE \$27.95
OUR PRICE \$13.50

Model No. 4022—MFR LIST PRICE \$31.95
OUR PRICE \$16.95

* * * * *

30 40 Telescope Bearing Stock #4317
List Price \$12.95----- \$7.50

* * * * *

FIRE EXTINGUISHER
FULL QUART—FRESHLY LOADED

\$6.95----- comparative list value \$20.60.

* * * * *

BRAND NEW
FULLY GUARANTEED

15 day money back guarantee.

* * * * *

PAR. 5. (1) Through the use of the amounts in connection with the terms "MFR LIST PRICE" and "LIST PRICE" respondents represented that said amounts were the prices at which the merchandise referred to was usually and customarily sold at retail in their trade area, and through the use of said amounts and the lesser amounts that the difference between said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in said trade area.

(2) By and through the use of the term "comparative list value", respondents represented, directly or by implication, that a product of like grade and quality is usually and regularly sold at retail in the trade area where the representation is made at a price of \$20.60, and purchasers of respondents' product would realize a saving of the difference between the \$20.60 price and respondents' price of \$6.95.

(3) By and through the use of the terms "Fully Guaranteed" and "15 day money back guarantee" respondents represented, directly or by implication, that their merchandise is unconditionally guaranteed and that purchasers thereof may obtain a refund of their money within 15 days after purchasing said merchandise.

PAR. 6. In truth and in fact:

(1) The amounts set out in connection with the terms "MFR LIST PRICE" and "LIST PRICE" were not the prices at which the merchandise referred to was usually and customarily sold at retail in respondents' trade area, but were in excess of the price or prices at which the merchandise was generally sold in said trade area, and purchasers of respondents' merchandise would not realize a saving of the difference between the said higher and lower price amounts.

(2) A product of like grade and quality is not usually and customarily sold at retail in the trade area where the representation is made at a price of \$20.60, and purchasers of respondents' product would not realize a saving of the difference between the said higher and lower price amounts.

(3) Respondents' guarantees are not unconditional. The advertised guarantees fail to set forth the nature, conditions and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

Therefore, the advertisements and representations referred to in Paragraphs 4 and 5 were and are exaggerated, false, misleading and deceptive.

PAR. 7. In the conduct of their business, at all times mentioned herein, the respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale

of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. 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 purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

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 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.

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 Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss are individuals and are partners trading as Job Lot Trading Co., with their office and principal place of business located at 43 Vesey Street, in the city of New York, State of New York.

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 Arthur Krauss, Sam Osman, Daniel Krauss and Harry Krauss, individually and as partners trading as

Job Lot Trading Co., or under any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sporting goods, hardware, navigational equipment, paints, binoculars, telescopes, microscopes or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "MFR LIST PRICE", "LIST PRICE", or words of similar import, to refer to any amount which is in excess of the price or prices at which such merchandise is usually and customarily sold in the trade area where the representation is made; or otherwise misrepresenting the usual and customary retail selling price or prices of such merchandise in the trade area.
2. Representing in any manner that, by purchasing any of respondents' merchandise, customers are afforded savings amounting to the difference between respondents' stated selling price and any other price used for comparison with that selling price, unless the comparative price used represents the price at which the merchandise is usually and customarily sold at retail in the trade area involved, or is the price at which such merchandise has been usually and regularly sold by respondents at retail in the recent, regular course of their business.
3. Representing in any manner that respondents' product is of a value comparable to any other product retailing at a higher price unless respondents' product is at least of like grade and quality in all material respects as the product with which it is compared and such other product is generally available for purchase at the comparable price in the same trade area, or areas, where the claim is made.
4. Representing, directly or by implication, that any saving is afforded in the purchase of respondents' product as compared to the purchase of another product unless respondents' product is at least of like grade and quality in all material respects as the product with which it is compared and such other product is generally available for purchase at the comparative price in the same trade area, or areas, in which the claim is made.
5. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature, conditions and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

WHITING SALES CO., INC., ET AL.

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