

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

STERLING PLASTICS CO. ET AL

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

Docket C-738. Complaint, Apr. 24, 1964—Decision, Apr. 24, 1964

Consent order requiring Union, N.J., importers of a complete line of school supplies, some from Japan, which they sold to wholesalers, jobbers and retailers for resale, to cease selling products such as rulers and compasses so packaged—in plastic pouches and cardboard boxes—or otherwise assembled as to obscure or conceal the mark of foreign origin appearing thereon, and selling them with the words "Sterling Plastics Co. Union, N.J." on the pouches and boxes, thus representing falsely that they were of domestic origin.

COMPLAINT

Pursuant to the provision 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 Sterling Plastics Co., a corporation, and George J. Staab and Mary D. Staab, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appear-

ing 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 Sterling Plastics Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1140 Commerce Avenue, in the city of Union, State of New Jersey.

Respondents George J. Staab and Mary D. Staab are officers of the corporate respondent. They formulate, direct and control the 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 importation, advertising, offering for sale, sale and distribution of a complete line of school supplies, including, but not limited to, rulers and compasses. Respondents sell their school supplies to wholesalers, jobbers and retailers for resale 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 New Jersey 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. Certain of the school supplies sold and distributed by respondents are manufactured in and imported from Japan. Certain of said school supplies are packaged in plastic pouches and others are packaged in cardboard boxes. In many instances, said foreign made school supplies are so packaged or otherwise assembled so as to obscure or conceal the mark of foreign origin appearing thereon. In said instances there is no adequate disclosure to the public that such school supplies are not made in the United States.

PAR. 5. Certain of the Japanese school supplies sold and distributed by the respondents are packaged in plastic pouches and cardboard boxes upon which appears the words "Sterling Plastics Co. Union, N.J." The words "Sterling Plastics Co. Union, N.J.," imprinted on said pouches and boxes constitute an affirmative representation that the school supplies contained in said pouches and boxes are of domestic rather than foreign origin. Such representation is false, misleading and deceptive as certain of said school supplies are of Japanese origin.

PAR. 6. In the absence of a clear and conspicuous disclosure that products, including school supplies, such as rulers and compasses,

are of foreign origin, the public believes and understands that they are of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure to clearly and conspicuously disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 7. By the aforesaid practices, respondents place in the hands of wholesalers, distributors and retailers, the means and instrumentalities by and through which they may mislead the public as to the country of origin of said products.

PAR. 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 products of the same general kind and nature as those sold by respondents.

PAR. 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 products are of domestic origin and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by

the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Sterling Plastics Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1140 Commerce Avenue, in the city of Union, State of New Jersey.

Respondents George J. Staab and Mary D. Staab are officers of said corporation, and their address is the same as that of said corporation.

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 Sterling Plastics Co., a corporation, and its officers, and George J. Staab and Mary D. Staab, individually and as officers of said corporation, 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 school supplies, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or distributing any product which is in whole, or which contains a substantial part or parts, of foreign origin or fabrication without affirmatively disclosing the country or place of foreign origin or fabrication thereof on the products themselves, by marking or stamping on an exposed surface or on a label or tag affixed thereto, of such degree of permanency as to remain thereon until consummation of consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making a casual inspection of the product.

2. Offering for sale, selling or distributing any such product packaged, or enclosed in a container, or mounted on a display card, without disclosing the country or place of foreign origin of the product, or substantial part or parts thereof, on the front or face of said package or container, so positioned as to clearly have application to the product so packaged, and of such degree of

permanency as to remain thereon until consummation of the consumer sale of the product, and of such conspicuousness as to be likely observed and read by purchasers and prospective purchasers making casual inspection of the product.

3. Representing, directly or indirectly, in any manner or by any means, that their products are of domestic origin when said products are in whole or contain a substantial part or parts which is or are, of foreign origin.

4. Placing in the hands of jobbers, retailers, dealers and other, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in respect to the origin 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

KAISER JEEP CORPORATION ET AL.

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

Docket C-739. Complaint, Apr. 27, 1964—Decision, Apr. 27, 1964

Consent order requiring two corporations engaged in the manufacture and distribution of "Jeep" motor vehicles and its parts and accessories to cease attempting to prevent its franchised dealers from stocking or selling items of special equipment supplied by other manufacturers by such acts or practices as threatening to cancel dealers' franchises, to install an additional dealer in a dealer's area, to refuse to honor warranty claims on Jeeps on which unfavored manufacturers' equipment had been installed, and to delay deliveries to a franchised dealer; policing activities of dealers in connection with the handling of special equipment they did not sponsor, setting an unreasonably high yearly quota for sales of special equipment they handled to keep dealers from selling other items, and cooperating with favored manufacturers of special equipment to prevent dealers from stocking that of others; and to cease coercing or intimidating any vendor of their products to prevent his buying special equipment not sold by them.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Sec. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof and more particularly described hereinafter, have been, and are now violating, 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 in respect thereto as follows:

PARAGRAPH 1. Respondent Kaiser Jeep Corporation is a corporation organized and existing under the laws of the State of Nevada, with headquarters located at plant site, 940 Cove Avenue, Toledo, Ohio. Until March 18, 1963, respondent Kaiser Jeep Corporation was named Willys Motors, Inc. Respondent Kaiser Jeep Corporation is a wholly owned subsidiary of Kaiser Industries Corporation, which has headquarters in Kaiser Center, 300 Lakeside Drive, Oakland 12, California.

Respondent Kaiser Jeep Sales Corporation is a corporation organized and existing under the laws of the State of Michigan. Until March 12, 1963, Kaiser Jeep Sales Corporation was named Willys Sales Corporation. Kaiser Jeep Sales Corporation is a wholly owned subsidiary of Kaiser Jeep Corporation and has its headquarters at the same address as Kaiser Jeep Corporation, 940 Cove Avenue, Toledo, Ohio.

PAR. 2. Respondent Kaiser Jeep Corporation since on or about 1953 has been and is now engaged in the business of the manufacture, sale and distribution in the United States and foreign countries of two and four wheel drive motor vehicles marketed under the trade name "Jeep". Respondent Kaiser Jeep Corporation also manufactures, sells and distributes parts and accessories for said vehicles. In addition, respondent Kaiser Jeep Corporation purchases certain equipment, hereinafter referred to as "special equipment", used on or in connection with said vehicles for specialized tasks and functions. Said "special equipment" is resold or otherwise distributed by respondent Kaiser Jeep Corporation to its franchised dealers, as more fully hereinafter set forth.

For many years Kaiser Jeep Corporation and its predecessor corporation, Willys-Overland Motors, was the sole manufacturer of such type vehicles and presently remains as the largest and predominant manufacturer in the field. Total domestic sales of vehicles, parts and accessories, and special equipment reached \$70,670,000.00 in 1959, a 24% increase over 1958.

Respondent Kaiser Jeep Sales Corporation was organized in 1955 by its parent corporation Kaiser Jeep Corporation. Under the direction and control of Kaiser Jeep Corporation, it handles dealer relationships and promotes the sale of "Jeep" vehicles, parts and accessories and "special equipment". Kaiser Jeep Sales Corporation conducts its operations through eight regions (sometimes referred to as zones) each with an office, and a regional manager in charge of operations and personnel attached thereto. Each region is divided into districts, each district, encompassing approximately 30 retail dealers, is serviced by a district manager directly responsible to his regional manager. The regional officers and district managers maintain close association with the dealers in their regions and districts, working constantly on improvement of all aspects of the dealership and especially to increase or attempt to increase the sales of "Jeep" vehicles, parts and accessories, and "special equipment" through its franchise dealers. Kaiser Jeep Sales Corporation enters into agreements, commonly called a "franchise," with retail dealers throughout the United States for the distribution and sale of "Jeep" vehicles, parts and accessories, with the exception of four small areas wherein agreements are with wholesaler distributors, who in turn distribute said goods through retail dealers.

PAR. 3. The respondents in the course and conduct of the aforesaid businesses sell and transport or cause to be transported the aforementioned vehicles, parts and accessories and "special equipment" to their franchised dealers or customers in States other than the States in which said vehicles, parts and accessories and "special equipment" are manufactured. There has been and is now a continuous and substantial trade in commerce in said products between and among the several States of the United States and the District of Columbia within the intent and meaning of the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their businesses, in commerce, as aforesaid, are now and have been at all times mentioned herein in competition with other corporations, individuals, partnerships and firms likewise engaged in the sale and distribution of similar products as described herein.

PAR. 5. There are more than 30 items of "special equipment" which are adaptable to the basic "Jeep" vehicles, and which are produced by manufacturers other than Kaiser Jeep Corporation. Examples of said items are devices which modify the vehicles' capabilities and body (*e.g.* selective drive hubs and body cabs or bumpers) or devices which enable the performance of numerous specialized functions (*e.g.* snow plows and street sweepers), or devices which take advantage of the vehicles' power take-off features (*e.g.* post hole diggers and winches).

Respondents, pursuant to agreements or other arrangements with certain manufacturers, are appointed the exclusive sales outlet for certain items of "special equipment" produced by such manufacturers which respondents promote and advertise to its dealers and the public as "Approved 'Jeep' Equipment" (sometimes hereinafter referred to as "approved special equipment"). In return for every order the dealers place with respondents for an item of approved "special equipment", the manufacturer pays respondents a sum of money equal to a percentage of the manufacturer's selling price of said equipment (sometimes hereinafter referred to as an "override commission"). However, respondents do not receive an override commission on purchases of "special equipment" by its dealers from manufacturers who have not entered into the above described arrangements or agreements with respondents.

The retail dealers are restricted under their franchise agreements to solicit retail sales for "Jeep" vehicles, parts and accessories supplied to the dealers exclusively by respondents only within a specified territory designated by respondents. However, said dealers are not required under the franchise agreement to resell "special equipment" supplied the dealers by respondents.

Respondents' retail dealerships represent the most effective and productive outlets for the display, sale and distribution of "special equipment" to consumers and therefore they are solicited for orders by manufacturers of equipment which is adaptable to the "Jeep" in the same manner as the approved "special equipment" supplied by respondent to these dealerships.

The total dollar sales by respondents of "special equipment" in 1961 was \$5,719,575. The total manufacturer's override commission received by respondents from manufacturers of said "special equipment" in 1961 was \$314,732.

PAR. 6. In order to increase override commissions, respondents, on or about 1955 and continuing to the present time, adopted and placed into effect a policy or program designed to restrict, prevent, restrain, hamper, hinder, pressure or discourage their franchised retail dealers from buying "special equipment" from any supplier other than respondents. This is hereinafter designated and referred to as "non-approved special equipment". For the purpose of carrying out and successfully effectuating such policy or program respondents engaged, and now engage in various acts and practices to coerce, influence, harass and intimidate respondents' franchised dealers to purchase "approved special equipment" from respondents, as follows:

(1) Threatened to cancel the franchise of dealers who did not discontinue the handling of "non-approved special equipment" and in

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some cases did cancel the franchises of dealers who refused to discontinue the handling of "non-approved special equipment".

(2) Threatened to install additional dealers in an established dealer's market area who refused to discontinue the handling of "non-approved special equipment" and in some instances did install additional dealers where established dealers refused to discontinue handling "non-approved special equipment".

(3) Threatened to refuse to honor warranty claims made with respect to vehicles with "non-approved special equipment" installed thereon and in some instances did actually refuse to honor said warranty claims because of this fact.

(4) Planned and keyed advertising programs, and promotional sales efforts and sales and promotion literature to the exclusive promotion and sale of approved "special equipment" to the exclusion of "non-approved special equipment" and cooperated extensively with one particular manufacturer of "special equipment" to effectuate such a restrictive and exclusive practice.

(5) Kaiser Jeep Sales Corporation regional and district managers, acting pursuant to instructions by respondents, made and do now make frequent visits or calls on the franchised dealers for the purpose of determining whether the franchised dealers are selling only "special equipment" approved by respondents to the exclusion of "non-approved special equipment" and for the purpose of exerting pressure on said dealers to conform to this policy.

(6) Delayed the delivery of vehicles and threatened to delay the delivery of vehicles ordered by franchised dealers who would not discontinue the sale of "non-approved special equipment".

(7) Set unreasonably high yearly quotas for unit sales of "approved special equipment" in order to prevent the franchised dealer from selling "non-approved special equipment".

(8) Coerced, intimidated or otherwise compelled franchised dealers to buy only "approved special equipment" from respondents, and deprived said dealers of their right to deal with any other supplier of such special equipment.

PAR. 7. The aforesaid acts and practices of respondents as hereinbefore alleged have had and are now having the capacity, tendency and effect of:

(1) Restraining, lessening and eliminating competition between manufacturers of "approved special equipment" and manufacturers of "non-approved special equipment".

(2) Depriving respondents' franchised dealers of their rights and privileges as independent businessmen to purchase "special equipment" from the manufacturer of their choice.

(3) Causing respondents' franchised dealers substantial monetary loss by cancelling their franchises in reprisal for their handling of "non-approved special equipment".

(4) Creating an arbitrary division of customers and allocation of territories as between cooperating and non-cooperating dealers, and favored and non-favored manufacturers of "special equipment".

(5) Foreclosing, preventing, restricting, restraining, hampering, hindering, and discouraging manufacturers of "non-approved special equipment" from making sales of their products to respondents' dealers, thereby restricting their markets and restraining the free flow of trade.

PAR. 8. Respondents' acts and practices as hereinabove alleged are all to the prejudice of the public and have a dangerous tendency to, and are now, unduly frustrating, hindering, suppressing, lessening, restraining, preventing and eliminating competition in the purchase and sale of various items of special equipment in commerce and constitute unfair methods of competition and unfair acts and practices within the intent and meaning 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. Respondent Kaiser Jeep Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 940 Cove Avenue, in the city of Toledo, State of Ohio.

Respondent Kaiser Jeep Sales Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 940 Cove Avenue, in the City of Toledo, State of Ohio.

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

I. *It is ordered*, That respondents Kaiser Jeep Corporation, a corporation, and Kaiser Jeep Sales Corporation, a corporation, and their officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale or distribution of special equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, as a means of preventing or attempting to prevent any of its dealers or distributors or other vendors from stocking or selling any item of special equipment not manufactured or sold by respondents, from engaging in any of the following acts or practices:

1. Threatening to cancel or cancelling the franchise of any dealer or distributor.

2. Threatening to install or installing an additional dealer or distributor in a franchised dealer's or distributor's area.

3. Threatening to refuse or refusing to honor a warranty claim made on a vehicle manufactured and sold by respondents on which had been installed equipment not approved, sponsored, recommended or favored by respondents unless respondents produce substantial evidence showing that such claim arose because of the installation, operation or use of such special equipment.

4. Policing or otherwise engaging in any investigation of the activities of any dealer or distributor in connection with the handling or selling of special equipment not approved, sponsored, recommended or favored by respondents.

5. Threatening to delay or actually delaying the delivery of any vehicles, parts or accessories to any franchised dealer or distributor.

6. Setting an unreasonably high yearly quota for dollar or unit sales of special equipment approved, sponsored, recommended or favored by respondents for the purpose or with the effect of preventing any franchised dealer or distributor from handling and selling any other item of special equipment.

7. Cooperating or agreeing to cooperate in any way with any manufacturer of special equipment to prevent or attempt to pre-

vent any dealer or distributor or other vendor from stocking or selling any item of special equipment not manufactured or sold by respondents by means of any of the foregoing acts or practices.

II. *It is further ordered*, That respondents Kaiser Jeep Corporation, a corporation, and Kaiser Jeep Sales Corporation, a corporation, and their officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale or distribution of special equipment in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, by any means or methods, from coercing or intimidating a franchised dealer, distributor, or any other vendor of respondents' products, as a means of preventing, in any way, such dealer, distributor or other vendor from buying or selling any item of special equipment not manufactured or sold by respondents.

III. *It is further ordered*, That respondents Kaiser Jeep Corporation and Kaiser Jeep Sales Corporation, corporations, shall within sixty (60) days after service upon them of this Order, inform and advise their appropriate personnel that, pursuant to this Order, dealers and distributors are not under any restriction, requirement, restraint or limitation to handle or sell only items of special equipment approved, sponsored, recommended or favored by respondents, and in so doing, forward to such personnel a true and correct copy of this Order.

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

STIFEL AND TAYLOR'S VALUE CITY, INC., ET AL.

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

Docket 8440. Complaint, June 28, 1961—Decision, Apr. 30, 1964

Order requiring the operator, to all intents and purposes, of a retail "discount house" in Wheeling, W. Va., under the trade name "Value City"—actually the lessor of a building in which it subleased space to 10 or 12 firms who operated different departments and sold their merchandise at discount prices, all under the management and supervision of aforesaid lessor—and two responsible individuals, to cease misrepresenting prices of merchandise of-

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ferred for sale in "Value City" by using such fictitious retail price representations in newspaper advertising as

"Reg. \$399.95	2-pc Living Room	Discount Price \$278.00,"
"Reg. Price \$269.95	Magic Chef Gas Range	Discount Price \$178.00,"

when the higher prices were not their usual prices and the purchaser did not realize a saving of the difference between the higher and lower prices.

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 Stifel and Taylor's Value City, Inc., a corporation, and Henry Krouse, David E. Kahn and Meyer Denmark, individually and as officers of said corporation, Top Value Furniture and Appliance Corporation, a corporation, doing business as Top Value Furniture and Appliance, and Top Value Furniture and Appliance Corp. of Wheeling, a corporation, and Harry A. Sigesmund, Phillip Brown, Shirley Sigesmund and Roberta Brown, individually and as officers of Top Value Furniture and Appliance Corporation and Top Value Furniture and Appliance Corp. of Wheeling, 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. Respondent Stifel and Taylor's Value City, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 1156 Main Street, in the city of Wheeling, State of West Virginia.

Respondents Henry Krouse, David E. Kahn and Meyer Denmark are officers of said corporate respondent. They formulate, direct and control the acts and practice of said corporate respondent, including those hereinafter set forth. Their address is the same as that of the corporate respondent.

Respondent Top Value Furniture and Appliance Corporation doing business as Top Value Furniture and Appliance, is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at 3047 Main Street, in the City of Weirton, West Virginia.

Respondent Top Value Furniture and Appliance Corp. of Wheeling is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal

office and place of business located at 1156 Main Street, in the city of Wheeling, West Virginia. It is a wholly owned subsidiary of respondent Top Value Furniture and Appliance Corporation.

Respondents Harry A. Sigesmund, Phillip Brown, Shirley Sigesmund and Roberta Brown are officers and directors of the last two named corporate respondents. They formulate, direct and control the acts and practices of said corporate respondents, including those hereinafter set forth. Their address is the same as that of said corporate respondents.

All of the aforesaid respondents have cooperated in and acted jointly in the advertising practices hereinafter set forth and referred to.

PAR. 2. Respondents Top Value Furniture and Appliance Corporation and Top Value Furniture and Appliance Corp. of Wheeling, are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of general merchandise, including furniture and household appliances, to the public.

PAR. 3. In the course and conduct of their businesses the respondents named in Paragraph Two hereof, now cause, and for some time last past have caused, some of their said products, when sold, to be shipped from their respective places of business in the State of West Virginia to purchasers thereof located in 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 businesses, at all times mentioned herein, the respondents named in Paragraph Two hereof have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of general merchandise, including furniture and household appliances, of the same general kind and nature as that sold by said respondents.

PAR. 5. Respondent Stifel and Taylor's Value City, Inc., owns a building in the city of Wheeling, West Virginia. It leases space in said building to various mercantile establishments, including Top Value Furniture and Appliance Corp. of Wheeling, which pay a fixed percentage of their gross dollar volume of sales to said lessor respondent as rental and other charges, including a designated portion thereof for advertising costs. The lessees submit to the lessor the price figures with reference to their articles of merchandise to be advertised and the lessor prepares and places the said advertising matter for publication in newspapers. Said lessor respondent thereby acts not only as the advertising agent for said lessees, including the other named respondents, but also, shares in the gross proceeds accruing from the sale of the merchandise sold by said lessees.

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PAR. 6. In the conduct of its business, at all times mentioned herein, respondent Stifel and Taylor's Value City, Inc., has been in substantial competition, in commerce, with other corporations, firms and individuals engaged in the advertising business.

PAR. 7. Respondents named in Paragraph Two hereof, and their officers, for the purpose of inducing the purchase of their aforesaid merchandise, have engaged in the practice of using fictitious retail price representations in connection with the sale thereof, in advertisements prepared and placed by respondents named in Paragraph One hereof in newspapers that have an interstate circulation. Among and typical, but not all inclusive, of said representations are the following:

Reg. \$399.95 2-pc Living Room—Discount Price \$278.00

Reg. Price \$269.95 Magic Chef Gas Range

Discount Price \$178.00

\$79.95 Modern Swivel Rocker Discount Priced \$50.80

Reg. Price \$159.95 Gas Range with Griddle

Discount Price \$108.00

PAR. 8. Respondents, through the use of the aforesaid statements, and others of similar import not specifically set out herein, represented, directly or by implication, that the higher stated prices were the usual and customary retail prices charged by the selling respondents for said merchandise in their recent regular course of business and that they had reduced said prices from the stated higher prices to the stated lower prices and that purchasers of the merchandise so advertised realized a saving of the differences between the said higher and lower prices.

PAR. 9. Said statements and representations were false, misleading and deceptive. In truth and in fact, the higher prices appearing in said advertisements were fictitious. Said selling respondents had no usual or customary retail prices at which their products were sold in the usual course of business and they did not customarily sell said articles of merchandise at said advertised higher prices. Therefore, the purchasers of said respondents' merchandise did not realize a saving of the differences between the said higher and lower prices.

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 statements and representations were, and are, true and into the purchase of substantial quantities of said selling respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to said respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett supporting the complaint.

Mr. Thomas Hollander of Evans, Ivory and Evans, Pittsburgh, Pa., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

FEBRUARY 28, 1964

Under date of June 28, 1961, the Federal Trade Commission issued a complaint charging Stifel and Taylor's Value City, Inc., a corporation, and Henry Krouse, David E. Kahn, and Meyer Denmark, individually and as officers of said corporation; Top Value Furniture and Appliance Corporation, a corporation doing business as Top Value Furniture and Appliance, and Top Value Furniture and Appliance Corp. of Wheeling, a corporation, and Harry A. Sigesmund, Phillip Brown, Shirley Sigesmund and Roberta Brown, individually and as officers of said corporations, hereinafter called respondents, with false advertising and fictitious pricing in violation of Section 5 of the Federal Trade Commission Act.

Subsequent to the issuance of the complaint, some of the respondents answered and requested that the matter be settled by consent order procedure. Accordingly, on August 29, 1961, the matter was referred to the Office of Consent Orders for disposition under the Consent Order procedure, and the undersigned hearing examiner was relieved of all further responsibility in the proceeding. An agreement containing a consent order not having been negotiated, on May 14, 1963, the proceeding was returned to the Office of Hearing Examiners for appropriate action. The undersigned was again designated as hearing examiner.

Pursuant to notice, a hearing was held in Wheeling, West Virginia, on October 22 and 23, 1963. At this hearing, both documentary evidence and oral testimony were received in support of and in opposition to the allegations of the complaint. Proposed findings have been filed by respective counsel, and the matter is now before the hearing examiner for initial decision. All proposed findings of fact and conclusions of law not found or concluded herein are rejected. Upon the basis of the

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entire record, the hearing examiner makes the following findings of fact and conclusions based thereon, and issues the following order:

FINDINGS OF FACT

1. The respondent, Stifel and Taylor's Value City, Inc., is a corporation organized and doing business under the laws of the state of West Virginia, with its office and place of business located at 1156 Main Street, Wheeling, West Virginia. The individual respondent David E. Kahn is president, and the individual respondent, Meyer Denmark is one of the vice presidents of the corporation. The individual respondent Henry Krouse is no longer an officer of said corporation. He was formerly president and served in said capacity until January or February, 1963, when he ceased to be president. He was never a stockholder in said corporation. The business address of the individual respondent David E. Kahn is the same as that of the corporation. Mr. Kahn resides in Columbus, Ohio. The individual respondent Meyer Denmark resides in Steubenville, Ohio.

2. The respondent Top Value Furniture and Appliance Corp. of Wheeling was formerly a corporation incorporated under the laws of the state of West Virginia in April 1960. The individual respondent Harry A. Sigesmund was president of said corporation. The other officers of said corporation were Shirley Sigesmund, wife of respondent Harry A. Sigesmund, and Roberta Brown and Phillip Brown, sister and brother-in-law, respectively, of respondent Harry A. Sigesmund. The principal office and place of business of said corporation was at 1156 Main Street, Wheeling, West Virginia. Said corporation was dissolved sometime during the month of August or September 1963, prior to the hearing herein.

3. The named respondent Top Value Furniture and Appliance Corporation was a corporation incorporated in 1961 under the laws of the State of West Virginia. It too was dissolved during the month of August or September 1963. There is no evidence in the record to establish the allegation that said corporation participated in or had any connection with the acts or practices complained about in this proceeding. For this reason, counsel for respondents moved that the complaint be dismissed as to that respondent. Counsel supporting the complaint did not oppose said motion. Accordingly, the complaint is being dismissed as against that respondent.

4. Stifel and Taylor's Value City, Inc., a corporation, leases a building located at 1156 Main Street in the city of Wheeling, West Virginia, where, to all intents and purposes, it operates what is commonly called a retail "discount house" under the trade name "Value City". However,

Stifel and Taylor's merely rents or sub-leases space in the building at 1156 Main Street in Wheeling to ten or twelve firms or corporations who operate different departments in said discount house, such as clothing, furniture and appliances, drugs, hardware, etc., for the sale of merchandise at retail at so-called "discount" prices. Mr. Kahn, president of Stifel and Taylor's Value City, Inc., who testified at the hearing, termed operators of these different departments as "licensees" rather than lessees. Mr. Kahn further testified as follows: That the lessees or "licensees" of the different departments in "Value City" sell all merchandise at discount prices, which prices are below the retail prices charged by competitors in Wheeling, West Virginia; the "licensees" pay a basic minimum rental based on a percentage, approximately 5 percent, of their gross volume of retail sales to Stifel and Taylor's as rent for use of their space and an additional percentage, approximately 3 percent, for advertising costs. Stifel and Taylor's Value City, Inc., manages and supervises the operation of "Value City", including the advertising (Tr. 26-35). The respondent Top Value Furniture and Appliance Corp. of Wheeling was the "licensee" or operator of the Furniture and Appliance Department in "Value City" from approximately May 1960, to May 1, 1961. This department sold articles of furniture, stoves, refrigerators, and the usual household appliances. It was during the time that the respondent Top Value Furniture and Appliance Corp. of Wheeling was operating the Furniture and Appliance Department in "Value City" that the alleged fictitious newspaper pricing advertisements appeared.

5. The evidence shows and it is found that, in the operation of "Value City", it was the practice of the particular department, in this instance Top Value Furniture and Appliance Corp. of Wheeling, to select the merchandise and the price thereof to be advertised in the newspaper, a so-called "regular" price and a "discount" price, and submit this to Stifel and Taylor's (Tr. 88-89). Stifel and Taylor's advertising department then prepared the copy for the advertisement and placed the advertisement in either or all of three newspapers, the *News-Register*, an evening newspaper, and the *Wheeling Intelligencer*, a morning newspaper, both published in Wheeling, West Virginia, and/or the *Times-Leader*, a newspaper published in Martins Ferry, Ohio. Stifel and Taylor's would pay the bill for the advertisement to the newspaper and then bill the said department "licensee", in this instance Top Value Furniture and Appliance Corp. of Wheeling, for its proportionate cost of the advertisement (Tr. 36-38). At the hearing, counsel stipulated that the circulation of these three named newspapers cross state lines and circulate in interstate commerce (Tr. 162-163).

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6. The essence of the violations charged in the complaint are that the corporate respondents and their officers have used fictitious retail price representations in newspapers of interstate circulation to induce the sale of their merchandise, such as the following:

Reg. \$399.95	2-pc. Living Room	Discount Price \$278.00
Reg. Price \$269.95	Magic Chef Gas Range	Discount Price \$178.00
Reg. Price \$79.95	Modern Swivel Rocker	Discount Price \$50.80
Reg. Price \$159.95	Gas Range with griddle	Discount Price \$108.00

The complaint further alleges that the higher prices appearing in said advertisements were fictitious and were not the usual or customary retail prices at which respondent corporations sold their merchandise in the regular course of business and the purchaser did not realize a saving of the difference between the said higher price and the lower price.

7. To establish the allegations of the complaint with respect to the alleged fictitious newspaper advertising, counsel supporting the complaint offered several newspaper advertisements from the *Wheeling News-Register*, the *Wheeling Intelligencer*, and the *Martins Ferry, Ohio, Times-Leader*, which had been published during the period 1960-1961, when respondent Top Value Furniture and Appliance Corp. of Wheeling was operating the Furniture and Appliance Department in "Value City". Mr. Kahn, president of the corporate respondent Stifel and Taylor's Value City, Inc., identified the advertisements as having been placed in said newspapers on behalf of "Value City". Certain pages of these newspaper advertisements were received in evidence as CX 2-7, inclusive. The newspaper advertisements purport to be on behalf of "Value City" and list various articles of merchandise for sale, including men's, women's, and children's clothing, furniture, floor coverings, stoves, refrigerators, household appliances, hardware, automobile accessories, drugs, toilet articles, etc. It is only those portions of these advertisements which list "reg." and "discount" prices for certain articles of merchandise that Commission counsel claims are fictitious. Some examples of this alleged false advertising will be set out.

8. For instance CX 2 is a one-page advertisement on behalf of "Value City" which appeared in the *Wheeling News-Register* on January 12, 1961. Near the bottom of the page of this advertisement, under the heading "Basement Furniture Department", appear the following:

Reg. \$399.95	2-pc. Living Room-----	Discount Price \$278.00
Reg. \$299.95	3-pc. Bedroom-----	Discount Price \$153.00

9. CX 3 is an advertisement on behalf of "Value City" which appeared in the Martins Ferry, Ohio, *Times-Leader* on November 25, 1960. In this advertisement, under the heading "Famous Brands Furniture & Appliances", various articles of furniture, refrigerators, stoves, etc., are advertised with two prices listed for each article, the "Reg." price and "Discount" price, such as:

Reg. Price \$79.95 Swivel Rocker, foam rubber
Discount Price \$50.80

10. CX 5 is a newspaper advertisement which appeared on behalf of "Value City" in the *Wheeling News-Register* on October 2, 1960. Under the heading "Furniture Super Buys", all articles are listed at two prices, "Reg." and "Discount", among them being:

Reg. Price		Price Discount
\$429.95	Admiral 13-cu. ft. Refrigerator.....	\$239
\$159.95	Gas Range, with griddle.....	\$108

11. It was the testimony of both Mr. Kahn and Mr. Harry A. Sigismund, the latter being the former president of Top Value Furniture and Appliance Corp. of Wheeling, that the articles listed in the advertisements were never sold in "Value City" at the "Reg. Price", but were always sold at the "Discount Price" listed in the advertisement. Thus, said advertised "Reg. Price" was not the price at which the particular item of merchandise was regularly and usually sold by "Value City", as represented in the advertisement, but the item of merchandise was sold at a lower price, called the "Discount Price". Consequently, purchasers of said merchandise did not realize a saving of the difference between the higher and the lower listed price. Said so-called advertised "Reg. Price" was, therefore, fictitious and an unfair act and practice in violation of Section 5 of the Federal Trade Commission Act. *J. Fiddleman & Son, Inc., et al.*, Docket 8043 [58 F.T.C. 31]; *Arnold Constable Corp.*, Docket 7657 [58 F.T.C. 49] and *Baltimore Luggage Corporation*, 296 F.2d 608.

12. One of the contentions of respondents was that they are and were engaged in the local retail trade in Wheeling, not in interstate commerce and, therefore, the Federal Trade Commission does not have jurisdiction over this proceeding. In fact, Mr. Kahn testified that "Value City" was a "cash and carry" operation and did not make delivery of merchandise purchased at the store. To rebut this contention, counsel supporting the complaint offered certain so-called sales invoices, CX 14-25, issued under the name "Value City" which purport to show the sale of various items of furniture and appliances at "Value City" to customers with addresses located outside the state of West Virginia. Mr. Sigismund, formerly president of Top Value Furniture and Appliance Corp. of Wheeling, identified each of these

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sales invoices as having been issued by his company's salesman Al Zimbroy for merchandise sold at "Value City". For instance, CX 14 is a sales invoice dated January 16, 1961, purporting to show the sale of a 2-piece living room suite to a customer whose address was listed in Rayland, Ohio, at a price of \$278. This invoice shows on its face a deposit of \$20 toward the purchase price with the designation "C.O.D. \$258.00". The "C.O.D. \$258.00" indicates that the merchandise was to be delivered to the customer at the address shown in Rayland, Ohio, at which time the customer would pay the balance of the purchase price, to wit \$258. This 2-piece living room suite meets the description of the 2-piece living room suite previously advertised in the *Wheeling News-Register* on January 12, 1961, referred to in CX 2, Paragraph 8, above.

13. CX 17 is another sales invoice dated October 10, 1960, listing the sale of an Admiral Refrigerator at a price of \$239, and a gas range at a price of \$108. The address of the customer shown on the sales invoice was Route 2, Clarrington, Ohio. The sales invoice also lists an additional charge of \$10 for delivery of the merchandise to the customer. These articles of merchandise appear to be the same articles of merchandise as those advertised in the *Wheeling News-Register* on October 2, 1960, referred to in CX 5, above, set out in Paragraph 10.

14. CX 15, 16, 19, 20, 22, 24, and 25 are additional sales invoices for merchandise sold at "Value City" which list the address of the customer at some location in the state of Ohio. Also, these invoices either list a specific sum as an additional charge for delivery of the merchandise or list a specific sum as a "down payment" toward the total purchase price and the balance "C.O.D.", thus indicating that the merchandise was delivered to the customer at the address in Ohio. Although Mr. Sigismund admitted that Top Value Furniture and Appliance Corp. of Wheeling made it a practice to deliver bulky items of merchandise to purchasers in the State of Ohio, nevertheless, he contended that the sales invoices (CX 14-25) do not show that the merchandise described in the invoice was delivered to the named customers in Ohio because the invoices do not bear the "signed receipt" by the customer. This argument has no merit. The evidence shows that, at the time of a sale at "Value City", it was the practice for the salesman to make four copies of each sales invoice. One copy was given to the customer, one copy given to Stifel and Taylor's Value City, Inc., one copy was given to the delivery man, and one copy was kept by Top Value Furniture and Appliance Corp. of Wheeling, the actual seller of the merchandise. CX 14-25 are the copies of the sales invoices kept by Top Value Furniture and Appliance Corp. of Wheeling in its office files. Naturally, these copies do not bear the signature of the customer. If the customer signed a receipt for delivery of the merchandise, it was the copy presented to

him by the delivery man. A preponderance of the evidence shows that Top Value Furniture and Appliance Corp. of Wheeling made it a practice to deliver merchandise to customers in Ohio. It is found, therefore, that respondents' plea to the jurisdiction of the Federal Trade Commission in this proceeding is without merit.

15. The evidence shows that the sales of furniture and appliances in the department operated by Top Value Furniture and Appliance Corp. of Wheeling during the approximate one-year period of its operation was approximately \$76,000, of which amount approximately 40 to 50 percent was in interstate commerce, being delivered to customers in the State of Ohio. The combined dollar volume of business done by all of the departments or so-called "licensees" in "Value City" amounted to approximately \$3,000,000 annually. Of this amount, approximately 40 to 50 percent was in sales and deliveries of merchandise to customers located in the State of Ohio, located across the Ohio River, immediately to the west of Wheeling, West Virginia.

CONCLUSIONS

The use by the respondents of the false and deceptive advertisements and practices found herein had the capacity and tendency to mislead members of the purchasing public into the mistaken belief that said representations were true and into the purchase of substantial quantities of respondents' products by reason of said mistaken belief. Said acts and practices, herein found, were and are to the prejudice and injury of the public and respondents' competitors and constitute unfair and deceptive practices and unfair methods of competition, in "commerce", within the intent and meaning of the Federal Trade Commission Act. The public interest requires that a "cease and desist" order be issued to stop such practices.

Commission counsel has requested that the order be issued against Stifel and Taylor's Value City, Inc., and its officers, and Henry Krouse, David E. Kahn and Meyer Denmark, individually and as officers of said corporation, and Top Value Furniture and Appliance Corp. of Wheeling, and its officers, and Harry A. Sigesmund, Phillip Brown, Shirley Sigesmund and Roberta Brown, individually and as officers of said corporation, and respondents' agents, representatives and employees, etc. Commission counsel does not object to the granting of respondents' motion to dismiss the complaint against Top Value Furniture and Appliance Corporation. He agrees that the evidence does not establish the allegation in the complaint that Top Value Furniture and Appliance Corporation participated in the violations alleged and found herein. Also, that corporate respondent no longer is in existence.

However, upon the basis of the entire record, the hearing examiner does not believe that it is necessary to issue a cease and desist order against each of the other respondents named in the complaint, both in their individual and corporate official capacities, in order to stop the violations complained about.

With respect to the officers of Stifel and Taylor's Value City, Inc., the evidence shows that Mr. Henry Krouse was president of Stifel and Taylor's Value City, Inc., from the time of its incorporation in 1958 or 1959 until January or February 1963, when he was replaced by Mr. David E. Kahn. Mr. Krouse is not now an officer of the corporation. He was never a stockholder. The evidence does not show that he ever participated in the formulation of policy or the advertising practices of Stifel and Taylor's Value City, Inc. During the time Mr. Krouse was president, the respondent David E. Kahn was vice-president-secretary and general manager of Stifel and Taylor's Value City, Inc. As such, Mr. Kahn directed the advertising practices and policies of Stifel and Taylor's Value City, Inc. With respect to the last named officer of Stifel and Taylor's Value City, Inc., Mr. Meyer Denmark, the evidence shows that Mr. Denmark is and has been treasurer of Stifel and Taylor's since the corporation was organized in 1958 or 1959. As such, he does not perform any duties. Mr. Denmark resides in Steubenville, Ohio, and, insofar as the evidence shows, he has not visited the store "Value City", more than four or five times. The evidence does not establish that he participated in the formulation of advertising policies of Stifel and Taylor's Value City, Inc.

With respect to the respondent Top Value Furniture and Appliance Corp. of Wheeling, and its named officers, the evidence shows that this corporate respondent was dissolved in August or September 1963, prior to the hearing herein. Were it now in existence, an order would be directed against it and its officers. Since that corporation is not now in existence, no useful purpose would be served in issuing an order against a non-existing respondent. The evidence shows that the respondent Harry A. Sigesmund was the president of Top Value Furniture and Appliance Corp. of Wheeling during its corporate life. As president, Mr. Sigesmund controlled and directed the policies and advertising practices of Top Value Furniture and Appliance Corp. of Wheeling. An order will be directed against Mr. Sigesmund in his capacity as an individual. There is no evidence in the record to show that the respondents Shirley Sigesmund, Phillip Brown, and Roberta Brown participated in the formulation of policy or advertising practices of Top Value Furniture and Appliance Corp. of Wheeling. For these reasons, no order against these respondents is required.

ORDER

It is ordered, That respondent Stifel and Taylor's Value City, Inc., a corporation, and its officers, and David E. Kahn, individually and as an officer of said corporation, and Harry A. Sigesmund, individually and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of general merchandise, including furniture and household appliances or any other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words or expressions "Reg." or "Reg. Price", or either of them, or any other term of similar import or meaning to describe or refer to the retail price of any article of merchandise when the amount so described is in excess of the price at which such article of merchandise has been usually and customarily sold by respondents, or any of them, in the recent, regular course of business.

2. Using the words or expressions "Discount price" or any other word or term of similar import or meaning, to describe or refer to the price of merchandise unless such price represents a reduction from the price at which such merchandise has been sold by respondents, or any of them, in the recent, regular course of business or represents a reduction from the price at which such merchandise has been sold at retail by others in the recent, regular course of their business in the trade area in which the representation is made.

3. Representing, directly or by implication, that any amount is the usual and customary retail price of merchandise in a trade area or areas when such amount is in excess of the price at which said merchandising is usually and customarily sold at retail in the trade area or areas where the representation is made.

4. 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 by others, in the trade area or areas wherein the representations are made.

It is further ordered, That the complaint be, and the same hereby is, dismissed, as to Top Value Furniture and Appliance Corp. of Wheeling and Top Value Furniture and Appliance Corporation, formerly corporations incorporated under the laws of the State of

West Virginia; and, also dismissed as to the individual respondents Henry Krouse, Meyer Denmark, Phillip Brown, Roberta Brown and Shirley Sigesmund.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

The complaint in this proceeding charges respondents with misrepresenting the so-called "Reg. [regular] Price" as the usual and customary retail price at which they sold their merchandise in the recent regular course of their business, and this matter is before the Commission upon the initial decision of the hearing examiner filed February 28, 1964. The examiner found the charge sustained by the evidence, holding individual respondents David E. Kahn and Harry A. Sigesmund and corporate respondent Stifel and Taylor's Value City, Inc., responsible for the challenged practices. He issued an order against these respondents, ordering them in effect to refrain from representing a price as the regular or usual price of their merchandise when it is in excess of the price at which respondents have usually and customarily sold such products in their recent regular course of business. To that extent the order is supported by the findings in the initial decision. The examiner went further, however, and prohibited respondents from representing directly or by implication that any amount is the usual and customary retail price of the merchandise in a trade area or areas when such amount is in excess of the price at which such merchandise is usually and customarily sold at retail in the trade area or areas where such representations are made. The findings in the initial decision do not support the issuance of an order containing a prohibition of this nature. The order, therefore, will be revised. Accordingly,

It is ordered, That the order to cease and desist in the initial decision be modified to read as follows:

ORDER

It is ordered, That respondents Stifel and Taylor's Value City, Inc., a corporation, and its officers, and David E. Kahn, individually and as an officer of said corporation, Harry A. Sigesmund, individually, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of general merchandise, including furniture and household appliances or any other article of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Complaint

1. Representing, directly or by implication, that the regular or usual price of any item of their merchandise is any amount which is in excess of the price at which respondents or any of them have usually and customarily sold such products in the recent and regular course of business.

2. Misrepresenting in any manner the savings available to purchasers or prospective purchasers from the prices at which respondents or any of them have usually and customarily sold such products in the recent regular course of business.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Top Value Furniture and Appliance Corp. of Wheeling, and Top Value Furniture and Appliance Corporation, formerly corporations incorporated under the laws of the State of West Virginia; and that the complaint be also dismissed as to the individual respondents Henry Krouse, Meyer Denmark, Phillip Brown, Roberta Brown, and Shirley Sigesmund.

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

It is further ordered, That respondents Stifel and Taylor's Value City, Inc., David E. Kahn and Harry A. Sigesmund, 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.