
IN THE MATTER OF
NEW CROSSTOWN RAILROAD SALVAGE COMPANY,
INC., ET AL.

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

Docket C-915. Complaint, July 13, 1965—Decision, July 13, 1965

Consent order prohibiting three affiliated Memphis, Tenn., concerns engaged in selling and distributing furniture, appliances and other merchandise to cease using the words "Railroad Salvage," or words of similar import in their corporate or trade names; and from using such words to describe their merchandise unless it was actually so; and from using the word "Value" to misrepresent a previous price of said merchandise; and from using comparative prices to imply that the purchaser would make a savings.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the

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Federal Trade Commission, having reason to believe that New Crosstown Railroad Salvage Company, Inc., a corporation, New Lamar Avenue Railroad Salvage Company, Inc., a corporation, and New Railroad Salvage Company, Inc., a corporation, and I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg, individually and as officers of each of said corporations, 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 New Crosstown Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 427 North Watkins Street, in the city of Memphis, State of Tennessee.

Respondent New Lamar Avenue Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 2331 Lamar Avenue, in the city of Memphis, State of Tennessee.

Respondent New Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 3104 Summer Avenue, in the city of Memphis, State of Tennessee.

The principal office of each of said corporations is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee.

Respondents I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg are officers of each of said corporate respondents. They formulate, direct and control the acts and practices of all of the corporate respondents, including the acts and practices hereinafter set forth. The principal office and place of business of respondents Mrs. Ray Kaplan Underberg and Ronald P. Underberg is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee. The principal office and place of business of respondent I. Leon Underberg is located at 1445 South Bellevue, in the city of Memphis, State of Tennessee.

PAR. 2. Respondents operate a warehouse and a chain of retail stores and have been and are now engaged in the advertising, offering for sale, sale and distribution of furniture, appliances, and other articles of merchandise to the general public.

Respondents New Crosstown Railroad Salvage Company, Inc., New Lamar Avenue Railroad Salvage Company, Inc., and New Railroad Salvage Company, Inc., are three of the aforesaid retail stores and will be sometimes hereinafter referred to collectively as the Railroad Salvage stores.

PAR. 3. In the course and conduct of their business, respondents have been and are now engaged in disseminating and causing to be disseminated in The Commercial Appeal and the Memphis-Press Scimitar, newspapers of interstate circulation, advertisements designed and intended to induce sales of said merchandise.

In the further course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their aforesaid places of business in the State of Tennessee to purchasers thereof located in the States of Arkansas and Mississippi, 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 purchase of said merchandise, respondents have made and are now making numerous statements and representations with respect to the origin and character of said merchandise and the savings afforded to purchasers of said merchandise. Among and typical of the aforesaid statements and representations, but not all inclusive thereof, are the following:

(a) * * * RAILROAD SALVAGE DISTRESS SALE * * * EVER
SO SLIGHT DAMAGE ALLOWS FOR FANTASTIC PRICE REDUC-
TIONS * * * 3 DAYS ONLY!!

* * * * *
IN CARTONS! 25 AIR-CONDITIONERS * * * TAKE 'EM WITH
YOU! * * * \$199.00 VALUE \$100.00

(b) * * * FREE WITH THIS COUPON AND PURCHASE OF EVERY
"HOUSE FULL" [sketch of furniture] * * * \$70.00 Value * * * New!
GE Swivel-Top Cleaner with Big Easy Roll Wheels Model C-65

* * * [sketch of a railroad boxcar with the words "RAILROAD SAL-
VAGE" printed on the side, and immediately thereunder the words] CO'S
INC. * * *

PAR. 5. Through the use of the aforesaid corporate names, and through the use of the aforesaid statements and representations and others similar thereto, but not specifically set forth, respondents have represented, directly or indirectly:

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1. That the Railroad Salvage stores are companies which offer to sell and sell merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies.

2. That said Air Conditioners and GE Swivel-Top Cleaners have been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies; and that said Air Conditioners were, accordingly, slightly damaged and distress merchandise.

3. That the higher price amounts accompanied by the word "VALUE" are not appreciably in excess of the highest price at which substantial sales of said merchandise have been made in the recent regular course of business in respondents' trade area; and that purchasers of said merchandise save \$99 and \$70 respectively when such merchandise is purchased from the respondents.

PAR. 6. In truth and in fact:

1. The Railroad Salvage stores are not companies which offer to sell and sell merchandise all of which has been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies. Respondents' sales of actual railroad salvage merchandise, if any, have been insignificant and have not and do not now constitute a significant portion of respondents' business.

2. Said Air Conditioners and GE Swivel-Top Cleaners have not been purchased from railroad companies after such merchandise has been damaged while in transit or for some other reason classified as "salvage" by such railroad companies. Said Air Conditioners and Vacuum Cleaners were not damaged or distress merchandise but were actually new merchandise purchased by respondents from usual and customary sources of supply.

3. The higher price amounts accompanied by the word "VALUE" are appreciably in excess of the highest price at which substantial sales of said merchandise have been made in the recent regular course of business in respondents' trade area; and purchasers of said merchandise do not save \$99 and \$70 respectively when such merchandise is purchased from the respondents.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of articles of merchandise of the same general kind and nature as those sold by respondents.

PAR. 8. The use by the 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' articles of merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the 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(a)(1) 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:

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1. Respondent New Crosstown Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 427 North Watkins Street, in the city of Memphis, State of Tennessee.

Respondent New Lamar Avenue Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 2331 Lamar Avenue, in the city of Memphis, State of Tennessee.

Respondent New Railroad Salvage Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal place of business located at 3104 Summer Avenue, in the city of Memphis, State of Tennessee.

The principal office of each of said corporations is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee.

Respondents I. Leon Underberg, Mrs. Ray Kaplan Underberg, and Ronald P. Underberg are officers of each of said corporations. The principal office and place of business of Mrs. Ray Kaplan Underberg and Ronald P. Underberg is located at 1025 Firestone Boulevard, in the city of Memphis, State of Tennessee. The principal office and place of business of I. Leon Underberg is located at 1445 South Bellevue, in the city of Memphis, State of Tennessee.

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 New Crosstown Railroad Salvage Company, Inc., a corporation, and its officers, New Lamar Avenue Railroad Salvage Company, Inc., a corporation, and its officers, New Railroad Salvage Company, Inc., a corporation, and its officers, I. Leon Underberg, Ronald P. Underberg, and Mrs. Ray Kaplan Underberg, individually, and as officers of each of said corporations, 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 furniture, appliances or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith desist from:

1. Using the words "Railroad Salvage" or either of them,

or any other word or words of similar import or meaning, as part of *any* of their corporate names or trade names: *Provided, however,* That should respondents so desire for reasons of continuity, respondents may use the identifying phrases "formerly Railroad Salvage Company" or "formerly Railroad Salvage Furniture Company" or words of similar import in advertising for a period not to exceed two years from the effective date of this order.

2. Using the words "RAILROAD SALVAGE" to designate or describe such merchandise or representing in any manner that said merchandise has been purchased from railroad companies after said merchandise has been damaged while in transit or for some other reason classified as "salvage" by said railroad companies.

3. Misrepresenting in any manner, directly or by implication, the source or character of any of said merchandise.

4. Representing, directly or by implication, that any merchandise is damaged or distress goods unless respondents are able to establish that such is the fact.

5. Using the word "VALUE" or any word or words of similar import to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in respondents' trade area; or otherwise misrepresenting the price at which such merchandise has been sold in respondents' trade area.

6. Misrepresenting, by means of comparative prices, or in any other manner, any savings available to purchasers or prospective purchasers 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.
