

Complaint
IN THE MATTER OF
E. J. KORVETTE, INC.

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

Docket C-1026. Complaint, Dec. 29, 1965—Decision, Dec. 29, 1965

Consent order requiring a New York City chain department store to cease making deceptive pricing and savings claims for its merchandise.

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 E. J. Korvette, Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent E. J. Korvette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 46th Street and the Avenue of the Americas, in the city of New York, State of New York.

PAR. 2. Respondent E. J. Korvette, Inc., owns, operates and controls, directly or through wholly owned and controlled subsidiary corporations, a chain of approximately thirty (30) department stores and other retail stores, located in approximately eight (8) States of the United States. Respondent E. J. Korvette, Inc., has been and is now engaged in the advertising, offering for sale, sale and distribution of furniture, carpeting and other articles of merchandise to the general public located in said States. Said department stores and all of the departments contained therein are advertised and represented to the general public as E. J. Korvette stores and departments.

Prior to August 16, 1965, H. L. Klion Inc., a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 397 East 54th Street, East Patterson, New Jersey, under a license agreement with the respondent E. J. Korvette, Inc., operated, directly or through wholly owned and subsidiary corporations, the furniture departments in said respondent's

department stores. On August 16, 1965, Korvette Home Furnishings Centers Inc., a wholly owned subsidiary of the respondent E. J. Korvette, Inc., by agreement acquired substantially all the assets and interests of H. L. Klion Inc., and its affiliated companies.

Prior to August 16, 1965, Federal Carpet Co. Inc., a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 245 Glen Cove Road, Carl Place, Long Island, New York, under a license agreement with the respondent E. J. Korvette Inc., operated, directly or through wholly owned subsidiary corporations, the carpet departments in the said respondent's department stores. On August 16, 1965, Korvette Home Furnishings Centers Inc., a wholly owned subsidiary of the respondent E. J. Korvette Inc., by agreement acquired all the stock of Federal Carpet Co. Inc., and its affiliated companies.

Since August 16, 1965, the respondent E. J. Korvette Inc., through its wholly owned subsidiary Korvette Home Furnishings Centers Inc., has operated the furniture and carpet departments formerly operated by said H. L. Klion Inc., and said Federal Carpet Co. Inc., respectively in the said respondent's department stores.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent formulates, directs and controls the acts and practices of said department stores, including but not limited to the purchasing, pricing, advertising, personnel, accounting and financial activities of said department stores. In the course and conduct of its business, respondent causes advertising mats, checks, sales memoranda, policy directives, and other documents and communications to be transmitted, by the United States mails and by other interstate mechanisms, to and from respondent's said principal office and place of business to said department stores located in said other States of the United States.

In the further course and conduct of its business, respondent sells and distributes said merchandise in commerce by causing said merchandise to be shipped to and from its warehouses, located in the several States of the United States, and from the places of business of its various suppliers, located in the several States of the United States, to said department stores for purchase at retail by the general public, located in States other than the States from which such shipments originate.

All of the aforesaid acts and practices have been engaged in, in the course and conduct of respondent's business and all such acts and practices have a close and substantial relationship to the interstate flow of respondent's business. There is now, and has been, at

all times mentioned herein, a substantial and continuous 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 its business, and for the purpose of inducing the sale of said merchandise it has been, and is now, respondent's policy to use in-store comparative pricing. Said in-store comparative pricing policy consists of the use of a tag or small sign which is affixed to or accompanies said merchandise at the point of sale to prospective purchasers at retail whereon a lower offering or selling price appears accompanied by a higher or comparative price representation such as, for example, "Comparable Value," "Was," "Regular," "Value" and "Mfg. List." Said lower and higher comparative price representations are established at said main offices of the respondent and are now, and have been, distributed by said main offices to said department stores through the use of written communications which are kept in a cumulative book by said department stores, designated a "MinMax" book, or by other forms of communication. Said comparative price representations are transferred from said "MinMax" books, or other communications, to said tags or signs by said department stores.

Among and typical of the statements and representations contained in respondent's newspaper advertisements announcing said comparative pricing policy, but not all inclusive thereof, are the following:

[photograph of a price tag containing the representation
"E. J. Korvette
MODEL NO.
57 pc. CHINA
DINNERWARE
SELLING PRICE
\$28.88
COMPARABLE VALUE
\$51.98"]

This is E. J. KORVETTE'S PRICE POLICY

This IS OUR PLEDGE * * * to bring great, glorious Chicago the ultimate in Quality * * * the best in Brand-Name Leadership * * *

The most in depth Quantities * * * the widest Diversifications in every department * * * and this above all:

Prices Below all!

* * * * *

This IS OUR PLAN * * * OUR PREMISE AND OUR PROMISE * * * to bring Suburban Chicago what Korvette-history has proven the people want most: The best of everything * * * Top Quality! Top Brand Names in depth

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assortment! All this generally at less than you ever thought imaginable.
THIS IS KORVETTE'S PRICE POLICY * * *.

PAR. 5. Among and typical of the statements and representations contained on said tags or signs used in the furniture, carpet, sporting goods, small appliance, and other departments of said department stores of the chain, but not all inclusive thereof, are the following:

(a) In the furniture department:

1. SPECIAL SALE

WAS

529.95

NOW * * *

329.97

ITEM NUMBER

No.

9 Pc. D/Rm

350

DESCRIPTION

651-09—China 4-651-92 S/chair

651-17—Buffet 2-651-91 A/chair

651-52—Table

FLOOR SAMPLE—FINAL SALE * * *

Other furniture identified below was tagged or labeled with the comparative price representation quoted below:

2. 2 Piece China (Co. H. Willet)

59-72 Base

59-726 Deck

WAS \$349.95

NOW \$224.97

3. 9 Piece Dining Room Set No. 345

Consisting of:

8005-50 Table

8010-62 China

8010-10 Buff

4-8005 S/C (Side Chairs)

2-8005 A/C (Arm Chair)

WAS \$659.95

NOW \$399.97

4. Loose Pillow Back Chair

Item No. 2011

Reduced price \$99.97

Regular price \$129.99

5. Sectional sofa

Item 6453

Reduced price \$499.97

Regular price \$544.99

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6. Loose Pillow Back Chair
Was \$149.95
Now \$89.97
Item No. KL-52
7. Chair
Was \$119.95
Now \$64.97
Item No. 529
8. Four-piece group price
Was \$679.95
Now \$479.97
Item Nos. 1820 Chest
1822 Triple dresser and mirror
1820 Night table
1821 Panel Bed

(b) In the carpet department, the carpeting identified below was tagged or labeled with the comparative price representations quoted below:

9. Brand—Mohawk
Pattern—Princeton 16 Sandbark
(All wool wilton)
Selling Price \$12.99 sq. yd.
\$16.99 VALUE
10. Brand—Mohawk
Pattern—PL 14
(All Acrylic face)
Selling Price \$11.44 sq. yd.
VALUE \$15.99 sq. yd.
11. Brand—Roxbury
Pattern—14210
Applique
Acrilian
Selling Price \$12.99 sq. yd.
\$16.99 VALUE
12. Brand—Bigelow
Pattern—Stratford House
11524-07778
100% Wool Face
Mothproofed
Selling Price \$13.99 sq. yd.
(Less Mad Money \$1 sq. yd.)
\$17.99 VALUE.

(c) In other departments of respondent's stores the merchandise identified below was tagged or labeled with the comparative price representations quoted below:

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13. Wilson K-28 Irons (8)
Model D-3682
Korvette LOW PRICE \$119.00
MFG LIST \$154.00
14. Sunbeam Hair Dryer
Model HD 10
SELLING PRICE \$19.89
LIST PRICE \$29.95
15. General Electric Four Slice Toaster
Model T116
Selling Price \$19.89
Less Mad Money \$2.00
List Price \$29.95
16. Smith Corona Portable Typewriter
Model Galaxie
MFG LIST \$122.10
KORVETTE LOW PRICE \$91.66.

PAR. 6. Through the use of the aforesaid statements and representations and others similar thereto, but not specifically set forth, as used variously by respondent in effectuating said comparative pricing policy:

(a) Respondent E. J. Korvette, Inc., and its licensee, H. L. Klion, Inc., have represented, directly or indirectly, that said higher price amounts accompanied by the words "WAS" or "REGULAR" are the prices at which such articles of merchandise were sold or offered for sale in good faith for a reasonably substantial period of time in the recent regular course of its business;

(b) Respondent E. J. Korvette, Inc., and its licensee, Federal Carpet Co., Inc., have represented, directly or indirectly, that said higher price amounts accompanied by the word "VALUE" are not 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 the trade area where such representations appeared;

(c) Respondent E. J. Korvette, Inc., has represented, directly or indirectly, that said higher price amounts accompanied by the phrase "MFG LIST" or "LIST PRICE" are not appreciably in excess of the highest price at which such merchandise has been regularly offered for sale in the recent regular course of business by a substantial number of the principal retail outlets in the trade area where such representations appeared;

(d) Respondent represents, directly or indirectly, that purchasers of said merchandise save an amount equal to the difference between said higher prices and the corresponding lower prices.

PAR. 7. In truth and in fact:

(a) The higher price amounts accompanied by the words "WAS" or "REGULAR" are not the prices at which such articles of merchandise were sold or offered for sale in good faith for a reasonably substantial period of time in the recent regular course of its business;

(b) The higher price amounts accompanied by the word "VALUE" are 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 the trade area where such representations appeared;

(c) The higher price amounts accompanied by the phrase "MFG LIST" or "LIST PRICE" are appreciably in excess of the highest price at which such merchandise has been regularly offered for sale in the recent regular course of business by a substantial number of the principal retail outlets in the trade area where such representations appeared;

(d) Purchasers of said merchandise do not save an amount equal to the difference between said higher prices and the corresponding lower prices.

Said statements and representations were, therefore, false, misleading and deceptive.

PAR. 8. In the course and conduct of its business, and at all times mentioned herein, respondent has 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 sold by respondent.

PAR. 9. The use by the respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondent's said merchandise by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce, in violation of Section 5(a)(1) of the Federal Trade Commission Act.

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DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent 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 respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 E. J. Korvette, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 46th Street and the Avenue of the Americas, 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 respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent E. J. Korvette, Inc., a corporation, and its officers, agents, representatives and employees directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of furniture, carpeting, sporting goods, small appliances, typewriters or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "WAS" or "REGULAR" or words of similar import to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale

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in good faith by such respondent for a reasonably substantial period of time in the recent regular course of its business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondent.

2. 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 the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

3. Using the words "MFG LIST" or "LIST PRICE" or any word or words of similar import, unless the merchandise so described is regularly offered for sale at this or a higher price by a substantial number of the principal retail outlets in the trade area: *Provided, however,* That this order shall not apply to point-of-sale offering and display of merchandise which is preticketed by the manufacturer or distributor thereof and the obliteration or removal of which preticketed price is impossible or impractical.

4. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondent's merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers or respondent's merchandise at retail.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

JESSE W. LAWSON DOING BUSINESS AS
NATIONAL ENTERPRISES