

Complaint

70 F.T.C.

IN THE MATTER OF

EUREKA TENT AND AWNING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1127. Complaint, Oct. 14, 1966—Decision, Oct. 14, 1966*

Consent order requiring a Binghamton, N.Y., manufacturer and distributor of tents, tarpaulins and other canvas products to cease making false pricing and savings representations and furnishing others the means to make such representations in the advertising of 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 Eureka Tent and Awning Company, Inc., a corporation, and Robert B. DeMartine, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Eureka Tent and Awning Company, 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 625 Conklin Road, Binghamton, New York.

Respondent Robert B. DeMartine is the president of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices herein set forth. His office and principal place of business is located at 625 Conklin Road, Binghamton, New York.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, advertising, offering for sale, sale and distribution of tents and tarpaulins and other merchandise to 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, said products, when sold, to be shipped from their place of business in the State of New York to retailers thereof located in various 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. Respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by the following methods and means:

By distributing, or causing to be distributed to retailers and others, catalogs which depict and describe their aforesaid products and contain a stated price for each.

In the manner aforesaid respondents thereby represent, directly or indirectly, that the amounts shown are respondents' bona fide estimate of the actual retail prices of said products in respondents' trade area and that they do not appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

In truth and in fact said amounts shown are not respondents' bona fide estimate of the actual retail prices of said products in respondents' trade areas and they appreciably exceed the highest prices at which substantial sales of said products are made at retail in said trade area.

Therefore, the statements and representations set forth above are false, misleading and deceptive.

PAR. 5. By the aforesaid acts and practices, respondents place in the hands of retailers the means and instrumentalities by and through which they may mislead the public as to the usual and regular retail price of said products.

PAR. 6. In the course and conduct of their business and at all times mentioned herein, respondents have been engaged 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. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements, representations practices, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents', as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now

constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The 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 Eureka Tent and Awning Company, 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 625 Conklin Road, Binghamton, New York.

Respondent Robert B. DeMartine is an officer of said corporation and his 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, Eureka Tent and Awning Company, Inc., a corporation, and its officers, and Robert B. DeMartine, individually and as an officer of said corporation, and re-

spondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, or distribution of tents, tarpaulins, or other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, disseminating or distributing any purported retail price unless (a) it is respondents' bona fide estimate of the actual retail price of the product in the area where respondents do business and (b) it does not appreciably exceed the highest price at which substantial sales of said product are made in said trade area.

2. Misrepresenting in any manner the prices at which respondents' merchandise is sold at retail.

3. Furnishing to others any means or instrumentalities whereby the purchasing public may be misled as to the retail prices of respondents' products.

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.
