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Complaint

complaint in Docket No. 5959, in its present form or as it may be amended, and superseding the consent settlement and order entered herein on June 10, 1952, shall become final.

IN THE MATTER OF

CUSTOM SLEEP SHOPPES, LTD., ET AL.

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

Docket 8709. Complaint, Sept. 12, 1966—Decision, Nov. 18, 1966

Consent order requiring a Silver Spring, Md., retailer of mattresses and other bedding products to cease using bait tactics and otherwise misrepresenting the design, construction, certification or approval 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 Custom Sleep Shoppes, Ltd., a corporation, and Harold Naiditch, 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 Custom Sleep Shoppes, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7910 Georgia Avenue, in the city of Silver Spring, State of Maryland.

Respondent Harold Naiditch is an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business 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 advertising, offering for sale, sale and distribution of mattresses and box springs to the public.

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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 Maryland to purchasers thereof located in the District of Columbia, 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 business as aforesaid and for the purpose of inducing the purchase of their said mattresses and box springs, respondents have represented and are now representing, directly or by implication:

1. That they are making a bona fide offer to sell mattresses at a reduced or special sale price of \$22.50 for a limited time only and that purchasers of such mattresses realize a savings from respondents' regular selling price.

2. Through the use of the words and terms "orthopedic," "Ortho-Chiro-Health," "Ortho Chiro Health Certified" and other words and terms of similar import not set forth herein, that certain of respondents' mattresses and box springs have been specially designed and constructed so as to prevent, correct or afford substantial relief to a body deformity or deformities, and accord with recommendations of orthopedic authorities respecting design and construction of such product for the prevention, correction or relief of such deformity or deformities.

3. Through the use of the term "custom built" or other words of similar import that certain of respondents' mattresses and box springs have been specially designed and constructed in accordance with specifications furnished prior to manufacture by individual purchasers and users of said mattresses or box springs.

4. Through the use of the statement "PHILADELPHIA MEDICINE official publication of the Philadelphia County Medical Society ORTHO-CHIRO-HEALTH CERTIFIED" that the design and construction of certain of respondents' mattresses and box springs have been certified or approved by said medical authorities.

5. By failing to reveal or otherwise, that purchasers' notes or installment contracts will not be discounted or negotiated to finance companies.

PAR. 5. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell the said mattresses at the aforesaid price but are made for the purpose of obtaining leads to persons interested in the purchase of mat-

tresses and box springs. After obtaining such leads, respondents, their salesmen or representatives call upon such persons at their homes. At such times, respondents' salesmen or representatives disparage the aforementioned mattress and otherwise discourage the purchase thereof and attempt to sell, and frequently do sell, different and more expensive mattresses and box springs.

2. The offer set forth above, is not for a limited time only. Said mattresses are offered regularly at the represented price.

3. Respondents' products are not being offered for sale at a special or reduced price and no savings are realized by respondents' customers.

4. Respondents' mattresses and box springs have not been specially designed and constructed so as to prevent, correct or afford substantial relief to body deformity or deformities nor do said mattresses accord with recommendations or orthopedic authorities respecting design and construction for prevention, correction or relief of such deformities.

5. Certain of the mattresses represented by respondents as being custom made are not specially designed in accordance with specifications furnished prior to manufacture by individual purchasers or users of their mattresses or box springs.

6. Said medical authority has not certified or approved the design and construction of respondents' mattresses or box springs.

7. Purchasers' notes or installment contracts are discounted or negotiated to finance companies.

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

PAR. 6. 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 mattresses and box springs of the same general kind and nature as that sold by respondents.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive 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 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 Commission having issued its complaint on September 12, 1966, charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

The Commission having duly determined upon a motion certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provision of § 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The respondents and counsel for the Commission having executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, 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 aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Custom Sleep Shoppes, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7910 Georgia Avenue, in the city of Silver Spring, State of Maryland.

Individual respondent Harold Naiditch is an officer of the corporate respondent and formulates, directs, and controls the acts, practices and policies of the corporate respondent. His office and principal place of business is the same as that of the corporate respondent.

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 Custom Sleep Shoppes, Ltd., a corporation, and its officers, and Harold Naiditch, individually and as an officer of said corporation, 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 mattresses, box springs or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of merchandise.

2. Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but is to obtain leads or prospects for the sale of other merchandise at higher prices.

3. Discouraging the purchase of, or disparaging, any merchandise which is advertised.

4. Representing, directly or by implication, that any merchandise is offered for sale when such offer is not a bona fide offer to sell said merchandise.

5. Using the word "sale," "save," "saving" or any word of similar import to refer to any amount which is not a significant reduction from the price at which the merchandise has been sold or offered for sale in good faith by respondents in the recent regular course of business, or otherwise misrepresenting the price at which merchandise has been sold or offered for sale by respondents, or otherwise misrepresenting in any manner the savings realized by purchasers of such products.

6. Using the word or term "orthopedic" or "Ortho Chiro Health" or "Ortho Chiro Health Certified" or any other words or phrases of similar import or meaning as descriptive of mattresses or any other bedding product not specifically designed and constructed so as to prevent, correct, or afford substantial relief to a body deformity or deformities, and not in accord with recommendations of orthopedic authorities respecting the design or construction of such product for the prevention, correction or relief of a body deformity or deformities; nor shall such words or phrases be used unless ac-

accompanied by specification of the kind or kinds of body deformities for which the product has been so designed and constructed.

7. Using the word "custom" or the phrase "custom built" or any other word or phrase of similar import or meaning as descriptive of stock merchandise; or representing, directly or by implication that their products have been specially designed and constructed in accordance with specifications furnished by purchasers or users prior to manufacture: *Provided however*, That this shall not prohibit respondents from using the name Custom Sleep Shoppes, Ltd., or representing items as custom made, that are, in fact not carried as inventory items and are built to specifications furnished by purchasers or users prior to manufacture.

8. Representing, directly or by implication, that the design and construction of their products have been approved by a practitioner or practitioners of medicine, orthopedics or chiropractic: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish the fact of such representation.

9. Misrepresenting the design, construction, certification, or approval of any such products.

10. Failing to disclose orally at the time of sale and in writing on any conditional sales contract promissory note or other instrument executed by the purchaser, with such conspicuousness and clarity as is likely to be read and observed by the purchaser that:

(1) Such conditional sales contract promissory note or other instrument may, at the option of the seller and without notice to the purchaser, be negotiated or assigned to a finance company or other third party;

(2) If such negotiation or assignment is effected, the purchaser will then owe the amount due under the contract to the finance company or third party and may have to pay this amount in full whether or not he has claims against the seller under the contract for defects in the merchandise, nondelivery or the like.

11. Obtaining the signature of any purchaser to any installment contract or promissory note without prior disclosure, in a clear and understandable manner that such contract or note may be discounted or negotiated to a finance company or other third party.

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.
