

IN THE MATTER OF
THE EMPECO CORPORATION DOING BUSINESS AS EMPIRE
FURNITURE AND APPLIANCE CO., ET AL.

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

Docket 8702. Complaint, Aug. 4, 1966—Decision, Feb. 14, 1967

Order requiring a Washington, D.C., furniture and appliance retailer to cease using various deceptive practices to induce its customers to sign sale contracts, making fictitious value claims, using deceptive offers of "free" merchandise, failing to disclose interest and other charges, and offering used articles as new.

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 The Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. and as Empire Home Equipment Co., and Allen C. Baverman, 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 The Empeco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 4911 Georgia Avenue, NW., Washington, D.C.

Respondent Allen C. Baverman 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 television sets, phonographs, household furniture, electrical appliances and other articles of merchandise to the public. Respondents do business under the names Empire Furniture and Appliance Co. and Empire Home Equipment Co.

PAR. 3. In the 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 place of business in the city of Washington, in the District of Columbia, to purchasers thereof located in various other States of the United States and in the District of Columbia, 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 aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia and the States of Maryland and Virginia, and in commercial messages broadcast throughout that area by radio station WOOK located in the District of Columbia.

Typical and illustrative, but not all inclusive, of such statements and representations are the following:

NO MONEY DOWN
PHILCO 19" PORTABLE
\$2.00 Weekly

* * * * * *

EMPIRE says pick any name brand 19 inch portable TV and we'll deliver it to you with no money down and payments of only \$2.00 a week.

* * * * * *

EMERSON FM MULTIPLEX
STEREO RADIO PHONO
\$3.00 WEEKLY
FREE \$50 WORTH OF RECORDS

* * * * * *

Call EMPIRE right now for a no obligation free home demonstration and to the first ten callers you get with your TV a \$19.95 portable stand free, plus, and listen to this plus, take your choice of a man's or woman's 17 jewel Gruen wristwatch.

* * * * * *

And here's a bonus to the first 10 callers * * * You get with your TV

a \$19.95 antenna, plus and listen to this, plus, a beautiful Gruen wrist-watch.

PAR. 5. Through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, respondents represent, and have represented, directly or by implication, that:

(1) Respondents sell their merchandise without requiring a down payment;

(2) Respondents arrange credit payments as low as \$2 weekly;

(3) The aforestated amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are not appreciably in excess of the highest prices 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;

(4) Respondents give a Gruen watch to the first ten callers who respond to their radio commercial message and purchase a television set.

PAR. 6. In truth and in fact:

(1) Respondents will not sell their merchandise without requiring a cash down payment or the trade-in of merchandise owned by the purchaser;

(2) Respondents do not arrange credit payments as low as \$2 weekly;

(3) The aforestated amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are appreciably in excess of the highest prices 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;

(4) Respondents do not give a Gruen watch, or any other article of merchandise, to the first ten callers who respond to their radio commercial message and purchase a television set.

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, and in furtherance of a deceptive sales program for inducing the purchase of their merchandise, respondents have engaged in the following unfair and deceptive acts and practices:

(1) Respondents have induced purchasers of their merchandise to sign blank conditional sale contracts and other instruments which respondents later complete as to prices, terms and

product information. In some instances the later inserted prices and charges substantially exceed those expressly or tacitly agreed upon and understood by the purchaser at the time of the instrument's execution.

(2) Respondents have obtained purchasers' signatures on conditional sale contracts and promissory notes by falsely representing that such instruments were merely receipts acknowledging that merchandise has been placed in the purchaser's home for demonstration or approval purposes.

(3) Respondents have failed or refused to disclose the total purchase price of their merchandise during the negotiation and at the consummation of the contract and have informed the purchaser of only the approximate amount of weekly installment payments. In some instances the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the conditional sale contract and promissory note.

(4) Respondents have induced purchasers to fabricate and simulate the signatures of absent members of the household as cosigners in the execution of conditional sale contracts and promissory notes attached thereto.

(5) Respondents have failed to disclose to the purchaser that the conditional sale contract and promissory note executed by such purchaser may at the option of respondents be negotiated or assigned to a finance company to which the purchaser will be indebted.

(6) Respondents have failed to supply certain purchasers with a copy of the executed conditional sale contract and promissory note at the time of consummation of the sale.

(7) Respondents have sold merchandise to purchasers which was represented, directly or by implication, to be new, when in truth and in fact said merchandise was used. In some instances, no representation was made concerning whether the merchandise was new or used. In the absence of disclosure that the aforesaid merchandise was used, respondents' customers believed that it was new. Therefore, respondents' failure to disclose that such merchandise was used was to the prejudice of respondents' customers.

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 television sets, phonographs, household furniture, electrical appli-

ances and other articles of merchandise 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 statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 10. 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.

Mr. Sheldon Feldman and *Mr. Walter C. Gross, III*, supporting the complaint.

Mr. Maurice A. Guervitz of Washington, D.C., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

DECEMBER 23, 1966

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on August 4, 1966, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act, by the use of false, misleading and deceptive statements, representations, and practices in the advertising and sale of the products sold by them. After being served with said complaint, respondents appeared by counsel and thereafter filed their answer, in which they admitted certain of the allegations of the complaint but denied having engaged in the illegal practices charged.

Pursuant to order of the examiner then in charge of this proceeding, a prehearing conference was convened herein on September 27, 1966, in Washington, D.C. On November 21, 1966, the undersigned was designated to act as hearing examiner in this proceeding due to the engagement of the prior examiner in other matters. Thereafter counsel supporting the complaint, with the concurrence of counsel for respondents, moved that (a) a stipula-

tion entered into between counsel, together with supporting exhibits, be accepted in lieu of testimony and that (b) the hearing then scheduled for December 6, 1966, be cancelled. The examiner, by order dated December 1, 1966, cancelled said hearing and took under advisement the balance of said motion pending his consideration of the adequacy of said stipulation and exhibits to dispose of this proceeding without the taking of testimony. By order dated December 20, 1966, the examiner incorporated the stipulation and supporting exhibits into the record, and closed the record herein for the reception of evidence.

The stipulation entered into between counsel contains a statement as to certain facts which would be testified to by witnesses who would have been called to testify in support of the allegations of the complaint, with the proviso that respondents neither admit nor deny the truth thereof. It has been agreed by counsel, pursuant to said stipulation, that the statements and exhibits stipulated to, together with the pleadings previously filed, shall constitute the entire record in this proceeding, and that the examiner may proceed to make his decision thereon without the filing of proposed findings or briefs, or the presentation of argument, by counsel. As part of their stipulation, counsel have also agreed to a form of order which may be entered herein.

Upon due consideration of the stipulation of counsel, together with the supporting exhibits and the pleadings filed herein, the undersigned finds that this proceeding is in the interest of the public, and makes the following:

FINDINGS OF FACT ¹

1. Respondent The Empeco Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 4911 Georgia Avenue, NW., Washington, D.C. Respondent Allen C. Baverman 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. Until October 1966 his business address was the same as that of the corporate respondent. (Admitted in Paragraph One of Answer, as modified by paragraph 1 of stipulation.)

2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and dis-

¹ Except where otherwise indicated, all findings made herein are based on the facts contained in the stipulation of counsel, or the reasonable inferences drawn therefrom.

Initial Decision

71 F.T.C.

tribution of television sets, phonographs, household furniture, electrical appliances and other articles of merchandise to the public. Respondents do business under the names Empire Furniture and Appliance Co. and Empire Home Equipment Co. Since October 1966, respondent Allen C. Baverman has ceased doing business at the above address. (Admitted, Paragraph Two of Answer, as modified by paragraph 1 of stipulation.)

3. In the course and conduct of their business, respondents, until October 1966, caused, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the city of Washington, in the District of Columbia, to purchasers thereof located in various other States of the United States and in the District of Columbia, 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. (Admitted, Paragraph Three of Answer, as modified by paragraph 1 of stipulation.)

4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia and the States of Maryland and Virginia, and in commercial messages broadcast throughout that area by radio station WOOK located in the District of Columbia.

Typical and illustrative, but not all inclusive, of such statements and representations are the following:

NO MONEY DOWN!
PHILCO 19" PORTABLE
\$2.00 WEEKLY

* * * * *
EMPIRE says pick any name brand 19 inch portable TV and we'll deliver it to you with no money down and payments of only \$2.00 a week.

EMERSON FM MULTIPLEX
STEREO RADIO PHONO
\$3.00 WEEKLY
FREE \$50 WORTH OF RECORDS

* * * * *
Call EMPIRE right now for a no obligation free home demonstration and to the first ten callers you get with your TV a \$19.95 portable stand free, plus, and listen to this plus, take your choice of a man's or woman's 17 jewel Gruen wristwatch.

* * * * *
And here's a bonus to the first 10 callers * * * You get with your TV

a \$19.95 antenna, plus and listen to this, plus, a beautiful Gruen wrist-watch. (Admitted, Paragraph Four of Answer.)

5. Through the use of the above-quoted statements and representations, and others of similar import not specifically set out herein, respondents represent, and have represented, directly or by implication, that:

(1) Respondents sell their merchandise without requiring a down payment;

(2) Respondents arrange credit payments as low as \$2 weekly;

(3) The aforesaid amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna are not appreciably in excess of the highest prices 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;

(4) Respondents give a Gruen watch to the first ten callers who respond to their radio commercial message and purchase a television set. (Admitted except as to subparagraph (3), in Paragraph Five of Answer.)²

6. In truth and in fact:

(1) Respondents did not sell their merchandise without requiring a cash down payment or the trade-in of merchandise owned by the purchaser;

(2) Respondents did not arrange credit payments as low as \$2 weekly;

(3) The advertised amounts of \$50 for the records, \$19.95 for the portable television stand and \$19.95 for the television antenna were appreciably in excess of the highest prices at which substantial sales of such merchandise had been made in the recent regular course of business in the trade area where such representations appeared; and

(4) Respondents did not give a Gruen watch, or any other article of merchandise, to the first ten callers who responded to their radio commercial message and purchased a television set.

Therefore, it is found that the statements and representations, as set forth in paragraphs 4 and 5 above, were and are false, misleading and deceptive.

7. In the course and conduct of their business, and in furtherance of a deceptive sales program for inducing the purchase of

² Finding in subparagraph (3) is based on examiner's expertise (acquired after almost 15 years as a Commission examiner) as to what a significant number of ordinary consumers would understand from respondents' advertising. *Drew v. FTC*, 235 F. 2d 735, 741 (2nd Cir. 1956).

their merchandise, respondents have engaged in the following unfair and deceptive acts and practices:

(1) Respondents induced purchasers of their merchandise to sign blank conditional sale contracts and other instruments which respondents later completed as to prices, terms and product information. In some instances the later inserted prices and charges substantially exceeded those expressly or tacitly agreed upon and understood by the purchaser at the time of the instrument's execution.

(2) Respondents obtained purchasers' signatures on conditional sale contracts and promissory notes by falsely representing that such instruments were merely receipts acknowledging that merchandise had been placed in the purchaser's home for demonstration or approval purposes.

(3) Respondents failed or refused to disclose the total purchase price of their merchandise during the negotiation and at the consummation of the contract, and informed the purchaser of only the approximate amount of weekly installment payments. In some instances the purchaser learned the total amount of indebtedness for the first time when contacted by the finance company to which respondents had negotiated or assigned the conditional sale contract and promissory note.

(4) Respondents induced purchasers to fabricate and simulate the signatures of absent members of the household as cosigners in the execution of conditional sale contracts and promissory notes attached thereto.

(5) Respondents failed to disclose to the purchaser that the conditional sale contract and promissory note executed by such purchaser may, at the option of respondents, be negotiated or assigned to a finance company to which the purchaser will be indebted.

(6) Respondents failed to supply certain purchasers with a copy of the executed conditional sale contract and promissory note at the time of consummation of the sale.

(7) Respondents sold merchandise to purchasers which was represented, directly or by implication, to be new, when in truth and in fact said merchandise was used. In some instances, no representation was made concerning whether the merchandise was new or used. In the absence of disclosure that the aforesaid merchandise was used, respondents' customers believed that it was new. Therefore, it is found that respondents' failure to disclose that such merchandise was used was to the prejudice of respondents' customers.

8. In the conduct of their business, at all times mentioned herein until October 1966, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of television sets, phonographs, household furniture, electrical appliances and other articles of merchandise of the same general kind and nature as those sold by respondents.

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

CONCLUSION OF LAW

The acts and practices of respondents, as hereinabove found, 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.

ORDER

It is ordered, That respondents The Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. or as Empire Home Equipment Co., or under any other name, and its officers, and Allen C. Baverman, 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 television sets, phonographs, household furniture, electrical appliances or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents sell their merchandise with "No money down," or that respondents sell their merchandise without requiring a down payment or trade-in.
2. Representing, directly or by implication, that respondents arrange credit or installment payments as low as \$2 weekly, or otherwise misrepresenting the amount of weekly

or monthly credit or installment payments permitted or required by respondents.

3. Representing, directly or by implication, that any amount is the "worth" or the value of merchandise given with or included in the purchase of specified merchandise, unless substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made at or in excess of the specified amount.

4. Representing, directly or by implication, that respondents give free or without cost, a watch, or any other article of merchandise, to callers who ultimately purchase respondents' merchandise.

5. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to sign blank or partially completed conditional sale contracts, or any other contractual instruments.

6. Inserting or changing any prices or any other charges in contracts or other instruments, unless such prices or other charges were agreed upon or understood by the purchaser, and unless such insertions or changes were with the written permission of the purchaser or were initialed by the purchaser on the changed instrument.

7. Inducing or causing purchasers or prospective purchasers of respondents' merchandise to execute conditional sale contracts, promissory notes or any other instruments by falsely representing that such contracts, notes or other instruments are receipts acknowledging that merchandise has been placed in the purchaser's home for demonstration or approval purposes; or otherwise inducing or causing purchasers or prospective purchasers to execute conditional sale contracts, promissory notes or any other instruments by misrepresenting the true nature or effect of such documents.

8. Failing or refusing to disclose the exact amount of the total purchase price of merchandise, including all interest, credit or service charges, at the time the contract for the sale of such merchandise is executed by the purchaser or purchasers.

9. Inducing or causing a purchaser of respondents' merchandise to fabricate or simulate the signature of an absent member of the household, or any other person, upon a conditional sale contract or any other instrument.

10. Failing or refusing prior to execution thereof to disclose orally, and in writing with such conspicuousness and clarity as likely to be observed and read by purchasers and prospective purchasers, that the conditional sale contract and promissory note executed by such purchaser may at the option of respondents be negotiated or assigned to a finance company or other party to which the purchaser will be indebted.

11. Failing or refusing to supply purchasers of respondents' merchandise with a copy of the executed conditional sale contract, promissory note or other agreement at the time of execution by the purchaser.

12. Representing, directly or by implication, that used merchandise is new; or selling any used merchandise which simulates or has the appearance of new merchandise without disclosing before consummation of the sale that such merchandise is used by conspicuously marking "used" on all written sales instruments, including invoices and sales contracts.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 14th day of February, 1967, become the decision of the Commission.

It is further ordered, That respondents The Empeco Corporation, a corporation, doing business as Empire Furniture and Appliance Co. or as Empire Home Equipment Co., or under any other name, and Allen C. Baverman, individually and as an officer of said corporation, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Complaint

71 F.T.C.

IN THE MATTER OF

ANGUS FREEZER MEATS, INC., TRADING AS BLACK ANGUS
FREEZER MEATS ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8720. Complaint, Nov. 4, 1966—Decision, Feb. 16, 1967*

Order requiring three affiliated meat dealers of Washington, D.C., Philadelphia, Pa., and Norfolk, Va., to cease using bait advertising, misrepresenting the grade and quality of their meat, falsely representing that their products are graded by the United States Department of Agriculture, and making other deceptive claims.

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 Angus Freezer Meats, Inc., a corporation trading as Black Angus Freezer Meats; Steakland Freezer Meats, Inc., a corporation; Black Angus Freezer Meats of Virginia, Inc., a corporation; and David W. Ewing, individually and as an officer 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 Angus Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 513 Morse Street, NE., in the city of Washington, District of Columbia, where it trades and does business as Black Angus Freezer Meats.

Respondent Steakland Freezer Meats, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 6228 Bustleton Avenue, in the city of Philadelphia, State of Pennsylvania.

Respondent Black Angus Freezer Meats of Virginia, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 151 East Little Creek Road, in the city of Norfolk, State of Virginia.