

Complaint

10. Failing to forward compensation owing to an establishment, furnishing reservations or services, when due.

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

IN THE MATTER OF

GIMBEL'S UPHOLSTERING CO., INC., ET AL.

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

Docket C-1330. Complaint, May 3, 1968—Decision, May 3, 1968

Consent order requiring a Washington, D.C., upholstering and refinishing firm to cease deceptively guaranteeing its services and failing to disclose that its conditional sales contracts may be assigned to a finance company.

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 Gimbel's Upholstering Co., Inc., a corporation, and William Lessey and Thelma Lessey, individually and as officers 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 Gimbel's Upholstering Co., 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 1534 7th Street, NW., Washington, D.C.

Respondents William Lessey and Thelma Lessey are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 slip covers, draperies and furniture upholstering and refinishing services to the public.

Complaint

73 F.T.C.

PAR. 3. In the course and conduct of their business as aforesaid, 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 District of Columbia to purchasers thereof located in the States of Maryland and Virginia and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products and services 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 products and services, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of substantial interstate circulation with respect to the guarantee of said products and services.

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

Satisfaction guaranteed.

* * * * *

All work fully guaranteed.

* * * * *

Written guarantees on all workmanship.

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of their salesmen and representatives, the respondents have represented, and are now representing, directly or by implication, that their products and services are unconditionally guaranteed.

PAR. 6. In truth and in fact, respondents' products or services are not unconditionally guaranteed. Such guarantee as they give is subject to conditions and limitations not disclosed in respondents' advertising or otherwise made known to the customer prior to sale.

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 as aforesaid, respondents have failed to disclose to purchasers that, at respondents' option and without notice to the purchaser, any conditional sales contract, promissory note, or other instrument of indebtedness executed by such purchasers in connection with their credit purchase agreements may be, and in a substantial number of instances has been, dis-

811

Decision and Order

counted, negotiated or assigned to a finance company or other third party to whom the purchaser is thereby indebted.

Therefore respondents' failure to disclose such material fact, as aforesaid, was and is false, misleading and deceptive, and constituted, and now constitutes, an unfair or deceptive act or practice.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of slip covers, draperies and furniture upholstery and refinishing services 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' products and services 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.

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 respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

Decision and Order

73 F.T.C.

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Gimbel's Upholstering Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 1534 7th Street, NW., in the city of Washington, District of Columbia.

Respondents William Lessey and Thelma Lessey are officers of said corporation and their 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 Gimbel's Upholstering Co., Inc., a corporation, and its officers, and William Lessey and Thelma Lessey individually and as officers 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 slip covers, draperies, upholstery or refinishing services, or any other products or services, 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 any merchandise or service is guaranteed, unless the nature and extent of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Making any direct or implied representations that any of respondents' products are guaranteed unless in each instance a written guarantee is given to the purchaser containing provisions substantially the same as those contained in such representations.

3. Failing to orally disclose prior to the time of sale, and in writing on any conditional sales contract, promissory note or other instrument of indebtedness executed by a purchaser, and

with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that any such instrument, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to which the purchaser will thereafter be indebted and against which the purchaser's claims or defenses may not be available.

4. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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.
