

Complaint

76 F.T.C.

IN THE MATTER OF

TOPS FURNITURE COMPANY, INC., ET AL.

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

Docket C-1591. Complaint, Oct. 6, 1969—Decision, Oct. 6, 1969

Consent order requiring a Washington, D.C., retailer of furniture and appliances to cease using unfair credit practices by failing to disclose to customers the legal import of its conditional sales contract, tendering any incomplete instrument for signature, failing to disclose the details of its "finance charge" system, and using debt collection forms which simulate legal documents.

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 Tops Furniture Company, Inc., a corporation, and Milton Mecklar, 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. Tops Furniture Company, 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 1001 H Street, NE., in Washington, D.C.

Respondent Milton Mecklar is an individual and 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 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 offering for sale, sale and distribution of furniture and appliances to the public. Respondents' customers are principally of the low income group and a large amount of respondents' sales to such customers are on credit.

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 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 aforesaid business, and for the purpose of inducing prospective customers to enter into contracts for the purchase of their furniture and appliances, respondents have engaged in the following unfair and deceptive acts and practices:

1. In a number of instances, respondents have had customers execute a conditional sales contract without informing the customers of the nature of the document and the legal import of their signing it.

2. In a number of instances, respondents have had customers execute conditional sales contracts which may have been incomplete since they did not, when executed, set forth financing or carrying charges.

3. In a number of instances, respondents did not inform customers that financing charges would be levied or added to the executed document.

4. In a number of instances, respondents have added financing charges to already executed sales contracts without the customer's knowledge.

5. In a number of instances, respondents did not provide customers with copies of the conditional sales contract which they have signed.

6. Respondents have employed an after-acquired property clause in their conditional sales agreement which would make all subsequent purchases from Tops subject to the previously executed security agreement.

7. Respondents have sent out a debt collection form which is deceptively similar to a process paper which might be issued by a court of law.

PAR. 5. 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 of furniture and appliances of the same general kind and nature as those sold by respondents.

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PAR. 6. The use by respondents of the aforesaid deceptive and unfair acts and practices has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public as to their rights and obligations and into the purchase of substantial quantities of respondents' products by reason of such deception; and 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 debtors into the erroneous and mistaken belief that such representations were, and are true, and into the payment of sums of money before their legal rights are ascertained by reason of said erroneous and mistaken belief.

PAR. 7. 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 heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Tops Furniture Company, 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 1001 H Street, NE., in Washington, D.C.

Respondent Milton Mecklar 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 Tops Furniture Company, Inc., a corporation, and its officers, and Milton Mecklar, 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 offering for sale, sale or distribution of furniture, appliances or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Tendering to any customer for his signature or inducing or permitting a customer to sign a conditional sale contract or any other credit instrument without informing the customer of the nature of the document and the legal import of signing it.

2. Tendering to any customer for his signature or inducing or permitting a customer to sign a conditional sale contract or any other credit instrument which is incomplete as to finance or carrying charges.

3. Failing to disclose orally and in writing to each customer who executes a retail installment contract, or who otherwise purchases merchandise or services from respondents on credit, before such customer obligates himself to make any such credit purchase, all of the following items:

(a) The cash price of the merchandise or service purchased.

(b) The sum of any amounts credited as downpayment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e) plus the amount described in paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price).

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondents in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(k) For purposes of this paragraph, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§ 106 and § 107 of] Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

4. Adding finance charges to any conditional sale contract or other credit instrument after the contract or instrument has been signed without the knowledge of the customer.

5. Failing to supply each customer who executes a conditional sale contract or other credit instrument, a copy of the contract or instrument at the time of execution by the customer.

6. Designating merchandise which is the subject of one retail installment contract as security for the buyer's performance under any other retail installment contract.

7. Failing or refusing to pass title to the buyer of merchandise purchased under a retail installment contract when the full time price of that merchandise has been paid.

8. Using any form of conditional sale contract or other instrument of indebtedness which provides that merchandise which is the subject of one contract will be security for the buyer's payment for subsequent purchases or that subsequent purchases will be added to and made a part of the original agreement; or which permits directly or by implication, the respondents to refuse or fail to pass title to the buyer of merchandise when the full time price of that merchandise has been paid.

9. Using a debt collection form or any similar writing which simulates a legal document or which resembles or is represented to be a document authorized, issued or approved by a court of law or any other official or legally constituted or authorized authority.

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 respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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.
