

Complaint

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IN THE MATTER OF

DOWD'S INC., DOING BUSINESS AS
DOWD'S TELEVISION & APPLIANCES, ET AL.

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

Docket C-1709. Complaint, Mar. 11, 1970—Decision, Mar. 11, 1970

Consent order requiring a Washington, D.C., retailer of electrical appliances to cease using bait and switch tactics, false pricing and savings claims, failing to maintain records adequate to justify its pricing claims, and deceptively using the words "No Money Down."

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 Dowd's, Inc., a corporation, trading and doing business as Dowd's Television & Appliances, and Robert T. Dowd, individually and as an officer of said corporation, and James Wilder, individually, 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. Dowd's, 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 4418 Connecticut Avenue, N.W., Washington, D.C.

Respondent Robert T. Dowd is an individual and 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.

Respondent James Wilder is an individual and a former officer of the corporate respondent. He formulated, directed, and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household appliances to the public.

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 merchandise, when sold, to be shipped from their place of

business 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, the respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers and telephone directories of which the following are typical and illustrative but not all inclusive thereof.*

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:

1. The offers set forth in said advertisements are bona fide offers to sell the advertised products at the prices and on the terms and conditions stated.

2. The respondents have sufficient quantities of the advertised products available for purchase to meet reasonably anticipated demands.

3. The advertised products are as pictorially represented.

4. The merchandise advertised and offered for sale by respondents is of the current model year.

5. During the period of the advertised "Pre-Inventory CLEARANCE," "LABOR DAY SALE," or words of similar import and meaning, the advertised price of any merchandise represents a reduction from the price at which respondents have made a bona fide offer to sell and have sold said merchandise on a regular basis for a reasonably substantial period of time in the recent regular course of business.

6. By the phrase "Color TV Savings" or by words of similar import and meaning and for the period of time so advertised, purchasers would realize a savings from the actual price at which the advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

7. The prices represented as being reduced are offered only during the limited period of the advertised sale, and such reduced prices

* Three pictorial newspaper advertisements omitted in printing.

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will return to respondents regular presale bona fide offering price or to some other substantially higher amount immediately upon conclusion of the advertised sale.

8. All purchases of the advertised products may be made with "NO MONEY DOWN."

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements are not bona fide offers to sell the advertised products at the prices and on the terms and conditions stated. Instead, respondents' salesmen disparaged the advertised products and attempted to induce the purchase of higher priced products. By these and other tactics, purchase of an advertised product was discouraged and respondents frequently sold higher priced products.

2. In a number of instances, the respondents did not have sufficient quantities of the advertised products available for purchase to meet reasonably anticipated demands.

3. In a number of instances the advertised products were not as pictorially represented. Frequently, respondents' advertising portrayed particular merchandise for sale at a specified price, while respondent was actually selling a less expensive model than the one pictured.

4. In a number of instances the merchandise advertised and offered for sale by respondents was not of the current model year.

5. During the period of the advertised "Pre-Inventory CLEARANCE," "LABOR DAY SALE," or words of similar import and meaning, the advertised price of any merchandise did not represent a reduction from the price at which respondents had made a bona fide offer to sell or had sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of business.

6. Purchasers of merchandise advertised as "Color TV Savings" or by words of similar import and meaning, and for the period of time so advertised, did not realize a savings from the actual price at which the advertised merchandise was offered for sale or sold by respondents in good faith for a reasonably substantial period of time in the recent, regular course of their business.

7. The prices represented as being reduced are not offered only during the limited period of the advertised sale, but are the prices at which respondents have sold or offer to sell their merchandise on a regular basis for a reasonably substantial period of time in the recent regular course of their business.

8. In a number of instances, purchases of the advertised product could not be made with "NO MONEY DOWN."

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 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 merchandise of the same general kind and nature at that sold by respondents.

PAR. 8. 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' product by reason of said erroneous and mistaken belief.

PAR. 9. 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

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 Dowd's, 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 4418 Connecticut Avenue, N.W., Washington, D.C.

Respondent Robert T. Dowd is an officer of the said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of said corporation.

Respondent James Wilder is an individual and a former officer of the said corporation. He formulated, directed and controlled the policies, acts and practices 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 Dowd's, Inc., a corporation, doing business under its own name or as Dowd's Television & Appliances, or under any other name or names and its officers, and Robert T. Dowd, individually, and as an officer of said corporation, and James Wilder, individually, 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, or other products, 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. Discouraging the purchase of, or disparaging, any products which are advertised or offered for sale.

3. Representing, directly or by implication, that any products are offered for sale when such offer is not a bona fide offer to sell such products.

4. Representing, directly or by implication, that any products are offered for sale, unless sufficient quantities of such products are available in stock to satisfy reasonably anticipated demands: *Provided, however*, That items available only in limited supply may be advertised if such advertising clearly and conspicuously discloses the number of units in stock and the duration of the offer.

5. Using pictorial representations in advertising to represent that respondents' merchandise contains certain features or construction which are not in fact supplied by respondent for the price advertised.

6. Misrepresenting directly or by implication, that merchandise advertised and offered for sale by respondents is of the current model year.

7. Using the words "Pre-Inventory Clearance," "LABOR DAY SALE," or any other word or words of similar import or meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant as to be meaningless, from the actual bona fide price at which such merchandise was sold or offered for sale to the public on a regular basis by respondents for a reasonably substantial period of time in the recent, regular course of their business.

8. Using the words "Save" or "Savings" or any other word or words of similar import or meaning in conjunction with a stated dollar amount or percentage amount of savings, unless the stated dollar or percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise has been sold or offered for sale on a regular basis to the public by the respondents for a reasonably substantial period of time in the recent regular course of their business.

9. (a) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondents' for a reasonably substantial period of time in the recent, regular course of their business.

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(b) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of said merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable merchandise, unless substantial sales of merchandise of like grade and quality are being made in the trade area at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with merchandise of like grade and quality.

10. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

11. Failing to maintain adequate records (1) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 7, 8, 9(a)-(c) and 10 of this order are based, and (2) from which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 7, 8, 9(a)-(c) and 10 of this order can be determined.

12. Representing, directly or by implication, that any offer is limited in point of time or restricted in any manner, unless the represented limitation or restriction is actually imposed and in good faith adhered to by respondents.

13. Using the words "No Money Down" or any other word or words of similar import or meaning, unless in immediate conjunction therewith, respondents truthfully and nondeceptively describe the category of purchasers to which they will sell their product or products without requiring a down payment.

14. 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 se-

cure from each such salesmen 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 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.