

Docket C-1969. Complaint, July 12, 1971—Decision, July 12, 1971

Consent order requiring a Littleton, Colo., individual engaged in the business of an advertising and promotional consultant for operators of furniture and other retail stores to cease misrepresenting the customary retail price of his customers' merchandise, deceptively using the words "half price" and "less than half price," using such words as "unprecedented public sale" and similar expressions to import distress selling, and misrepresenting savings available to purchasers.

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

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Trade Commission, having reason to believe that Tommy M. Buffington, an individual doing business as T. Buff Sales and as T. Buff & Associates, hereinafter referred to as respondent, has 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 Tommy M. Buffington is an individual residing and doing business at 6861 South Prince Circle, Littleton, Colorado, under the names of T. Buff Sales and T. Buff & Associates. He maintains an alternative business address at 2318 Moser Avenue, Dallas, Texas.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of an advertising and promotional consultant, developing and selling promotional plans and services to operators of furniture stores and other retail stores. In such capacity he engages and has engaged in the preparation and placement for publication of advertising material, including but not limited to the advertising referred to herein, and in the determination of prices at which merchandise will be offered for sale by his client retailers, in connection with and in order to promote the sale of merchandise at said retailers' stores.

PAR. 3. In the course and conduct of his business as aforesaid, the respondent performs and has performed his said services for client retailers who maintain, and at all times mentioned herein have maintained, a substantial course of trade in furniture and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act. In carrying out his aforesaid business, respondent travels from his places of business in the States of Colorado and Texas to premises of client retailers in various other States of the United States, causes the transmission of advertising copy and payments among and between such States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of furniture and other merchandise offered for sale by client retailers, the respondent has made and caused to be made numerous statements and representations in advertisements published in media of substantial interstate dissemination.

For example, the following statements and representations, among others, were inserted by respondent in newspaper advertising of National Furniture Stores, Inc., Spokane, Washington:

UNPRECEDENTED PUBLIC SALE!**100% Total Stock Sale * * *****ENTIRE CONTENTS UP FOR PUBLIC GRABS * * *****FORCED TO SELL All Surplus FURNITURE!****Regardless of Costs or Losses***** * *** must be sold at whatever price is available on the public market *** * *****Certified Store-Wide Reductions up to 78% Off!****One-of-a-kind Door Busters:***** * ***

\$269.95 Hide-Away Sofa Sleeper w/Full Size Mattress----- \$100

\$229.95 Admiral Family Size Refrigerator----- \$125

Entire Stock LAMPS ½ PRICE!

\$19.95 Full or Twin-Size Padded Headboards, \$8

Less than ½ Price!

\$79.95 Maple Bunk Beds, \$38

*Less than ½ Price!***MATTRESS AND BOX SPRINGS, NAME BRANDS****PRICED AS LOW AS * * * \$18**

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent represents and has represented, directly or by implication:

1. That the higher stated prices, accompanied by the words "Regular" or "Reg.," or unaccompanied by descriptive language, were the prices at which the advertised articles were sold or offered for sale in good faith for a reasonably substantial period of time by his client retailer, in the recent regular course of business, and that purchasers of such articles would save an amount equal to the difference between the advertised higher prices and the lower offering prices corresponding thereto.

2. That purchasers of merchandise advertised in conjunction with the phrases, "½ price," "less than ½ price," "up to 78% off," or terms of comparable import and meaning, would realize a savings of the stated fractional or percentage amount from the actual prices at which the merchandise so advertised was sold or offered for sale in good faith for a reasonably substantial period of time, by his client retailer, in the recent regular course of business.

3. That, during the period advertised as "Unprecedented Public Sale . . . regardless of costs or losses," and by other terminology importing circumstances of distress, substantially all merchandise at his client retailer's premises was for sale at prices or amounts representing a substantial and significant reduction from the prices at which such merchandise was sold or offered for sale in good faith by

such retailer for a reasonably substantial period of time in the recent, regular course of business.

4. That widely recognized makes of mattress and box springs were for sale for as little as \$18, and that other articles advertised for sale at stated offering prices were available for retail purchase at such stated prices, at the advertised premises.

PAR. 6. In truth and in fact:

1. The higher stated prices, accompanied or unaccompanied by descriptive language, were not the prices at which the advertised articles were sold or offered for sale in good faith for a reasonably substantial period of time by his client retailer, in the recent regular course of business, and purchasers thereof would not save amounts equal to the difference between the advertised higher prices and the lower offering prices corresponding thereto.

2. Purchasers of merchandise advertised in conjunction with the phrases, "½ price," "less than ½ price," "up to 78% off," or terms of comparable import and meaning, did not realize savings of the stated fractional or percentage amount from the actual prices at which the merchandise so advertised was sold or offered for sale in good faith for a reasonably substantial period of time, by his client retailer, in the recent regular course of business.

3. During the period advertised as "Unprecedented Public Sale . . . regardless of costs or losses," and by other terminology importing circumstances of distress, substantially all merchandise at his client retailer's premises was not in fact for sale at prices or amounts representing a substantial and significant reduction from the prices at which such merchandise was sold or offered for sale in good faith by such retailer for a reasonably substantial period of time in the recent regular course of business.

4. Widely recognized makes of mattress and box springs were not in fact available for sale for as little as \$18 at his client retailer's premises during the advertised sale, and certain other articles advertised for sale at stated offering prices were not then available for retail purchase at such stated prices, but at higher prices.

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 his aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in commerce with corporations, firms and individuals engaged in the advertising and promotion business.

In the course and conduct of their aforesaid businesses, and at all

times mentioned herein, National Furniture Stores, Inc., and other client retailers of respondent's have been, and now are, in substantial competition in commerce with corporations, firms and individuals engaged in the sale of furniture and other merchandise of the same general kind and nature as that sold by such client retailers.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts 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 his client retailers' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, were and are all to the prejudice and injury of the public, of respondent's competitors, and of his client retailers' 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Field Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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, not in further conformity with the

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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 Tommy M. Buffington is an individual doing business as T. Buff Sales and T. Buff & Associates, with his principal offices and places of business located at 6861 South Prince Circle, Littleton, Colorado, and 2318 Moser Avenue, Dallas, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Tommy M. Buffington, an individual doing business as T. Buff Sales, T. Buff & Associates, or under any other name or names, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of furniture or other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing or causing to be represented, directly or by implication, that any amount, accompanied or unaccompanied by descriptive language, is a retailer's usual and customary retail price of merchandise unless said amount is the price at which the merchandise has in fact been usually and customarily sold or offered for sale in good faith by such retailer in the recent regular course of business.

2. Using or causing to be used the words "half price," "less than half price," "up to 78% off," or words or symbols of comparable import or meaning, except in specific reference to articles usually and customarily sold or offered for sale in good faith by the advertising retailer, in the recent regular course of business, at prices not less than the indicated multiple of the offering price so described or alluded to.

3. Using or causing to be used the words "Unprecedented Public Sale," "Forced to Sell Regardless of Costs or Losses," "Up for Public Grabs," or other words or symbols importing circumstances of distress, unless the merchandise so described or alluded to has been reduced in price, by an amount or proportion of practical significance to customers and prospective customers, from the actual bona fide price or prices at which it has been usually and customarily sold or offered for sale in good

faith by the advertising retailer in the recent, regular course of business.

4. Misrepresenting or causing to be misrepresented in any manner that savings are available to purchasers of a retailer's merchandise, or the amount of such savings.

5. Representing or causing to be represented in advertising that any article is for sale at a stated offering price when such article is not, in fact, conspicuously and readily available for retail purchase at such price at the advertised premises.

It is further ordered, That 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

R. H. MACY & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF