

Docket C-2466. Complaint, Oct. 12, 1973—Decision, Oct. 12, 1973.

Consent order requiring two furniture stores located in Beaumont and Port Arthur, Tex., among other things to cease misrepresenting the amount of savings accorded customers who purchase respondents' merchandise;

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misrepresenting prices as customary or regular when in fact they are not; representing themselves as authorized factory outlets; and failing to maintain adequate records to substantiate their claims.

Appearances

For the Commission: *Carl L. Swanson, Jr.* and *Creighton Chandler*.

For the respondents: *pro se*.

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 Howell Liquidating Company, Inc., a corporation, d/b/a Howell's Discount Furniture and C. Aubrey Cheatham as an officer of said corporation; Quality Discount Furniture, a copartnership, and W. Thurman Witt and C. Aubrey Cheatham, individually and copartners of Quality Discount Furniture also d/b/a Howell's Discount Furniture, 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 Howell Liquidating Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2070 Gulf Street, Beaumont, Texas.

C. Aubrey Cheatham is an officer of the corporate respondent, Howell Liquidating Company, Inc. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Said individual respondent's address is the same as that of the corporate respondent.

Respondent Quality Discount Furniture is a copartnership organized, existing and doing business in the State of Texas, trading and doing business as Howell's Discount Furniture with its offices and principal place of business located at 3445 Gulfway Drive, Port Arthur, Texas.

Respondents C. Aubrey Cheatham and W. Thurman Witt are individuals and copartners of Quality Discount Furniture, d/b/a Howell's Discount Furniture, with their partnership offices and

principal place of business located at 3445 Gulfway Drive, Port Arthur, Texas. These individual respondents, at all times mentioned herein, participated in the formation, direction and control of the acts and practices of Quality Discount Furniture, d/b/a Howell's Discount Furniture, 3445 Gulfway Drive, Port Arthur, Texas.

PAR. 2. Respondents are now, and at all times material hereto have been, engaged in the business of operating furniture stores selling merchandise to members of the purchasing public.

PAR. 3. In the course and conduct of their business respondents have been and are engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, and in television broadcasts of interstate circulation, advertisements designed and intended to induce sales of their merchandise. The amount expended by respondents upon such advertising is approximately thirty-six thousand dollars per year.

PAR. 4. Among and typical, but not all inclusive, of the statements appearing in the advertisements described in Paragraph Three are the following:

SALE ½ PRICE!

Thousands Sold Nationally At Its Regular Price \$159.00. Two Days Only \$79.95 Set.

Regular \$159.00 a Set \$79.90 a Set Double or Twin Size.

King Size Sets regular \$319.95 now \$159.

PAR. 5. Through the use of the amount in connection with the words and terms "Regular Price" and "regular" respondents represented that said amounts were the prices at which they usually and customarily sold the merchandise referred to in the recent, regular course of business and through the use of the said amounts and the lesser amounts that the difference between said amounts and the lesser amounts represented savings from the prices at which the merchandise referred to had been sold by respondents in the recent, regular course of their business. Through the use of the terms "SALE ½ PRICE" respondents represented the actual selling price to be one-half of its regular price.

PAR. 6. In truth and in fact the amounts set out in connection with the words "Regular Price" and "regular" were in excess of the prices at which the merchandise referred to was usually and customarily sold by respondents in the recent, regular course of business and the difference between such amounts and the lesser amounts did not represent savings from the prices at which the

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merchandise had been usually and customarily sold in respondents' stores. In truth and in fact the price represented as "Sale 1/2 Price" was not one-half of respondents' usual and regular selling price.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. Respondents have also represented in their advertising that "Howell's is an authorized factory outlet."

PAR. 8. In truth and in fact the respondent's stores are not authorized factory outlets.

Therefore, the statement and representation as set forth in Paragraph Seven is false, misleading and deceptive.

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. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business in the State of Texas to purchasers thereof located in the State of Louisiana 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. 11. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and constituted, and now constitute, 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 New Orleans Regional Office 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 Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Howell Liquidating Company, Inc., d/b/a Howell's Discount Furniture, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 2070 Gulf Street, Beaumont, Texas.

Respondent C. Aubrey Cheatham is an individual and is president of Howell Liquidating Company, Inc., d/b/a Howell's Discount Furniture. He formulates, directs and controls the acts and practices of said corporations including the placing of newspaper advertisements having interstate circulation.

2. Respondent Quality Discount Furniture, d/b/a Howell's Discount Furniture, 3445 Gulfway Drive, Port Arthur, Texas is a partnership owned and operated as equal partners by C. Aubrey Cheatham and W. Thurman Witt.

Respondents C. Aubrey Cheatham and W. Thurman Witt, individually and as copartners formulate, control, and direct the acts and practices of Quality Furniture, d/b/a Howell's Discount Furniture, 3445 Gulfway Drive, Port Arthur, Texas.

3. 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.

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ORDER

It is ordered, That respondent Howell Liquidating Company, Inc., a corporation, d/b/a Howell's Discount Furniture and Quality Discount Furniture, a partnership, d/b/a Howell's Discount Furniture, and C. Aubrey Cheatham, individually and as an officer of the said corporation and W. Thurman Witt and C. Aubrey Cheatham individually and as copartners in the said partnership, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of furniture, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Regular Price" and "Regular" or any other words of similar import and meaning, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business and unless respondents' business records establish that said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business.

2. Using the words "one-half price," or 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.

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

4. Representing, in any manner, that respondents' stores are authorized factory outlets.

5. Failing to maintain adequate records

- (a) 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 1-3 of this order are based, and

- (b) From which the validity of any savings claims,

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including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 1-3 of this order can be determined.

6. 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 and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents or their successors or assigns notify the Commission at least thirty days prior to any proposed change in any of the corporate respondents 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 corporate respondent which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business address and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That respondents distribute a copy of this order to all firms and individuals involved in the formulation and implementation of advertising of respondents' products.

It is further ordered, That 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.

IN THE MATTER OF

LITTON INDUSTRIES, INC.

Docket 8778. Interlocutory Order, Oct. 16, 1973.

Order denying complaint counsel's application for interlocutory review of law judge's ruling upon scope of hearings to be conducted on remand; and denying complaint counsel's motion for withdrawal of Commission's order remanding for hearings on issue of relief.

Appearances

For the Commission: *Murray L. Lyon, Harold G. Munter and Joseph J. O'Malley.*