

Complaint

84 F.T.C.

IN THE MATTER OF

MEYERS OUTFITTERS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2540. Complaint, Sept. 5, 1974—Decision, Sept. 5, 1974*

Consent order requiring a Newark, N.J., retailer of furniture and appliances, among other things to cease using bait advertising.

*Appearances*For the Commission: *William Popoff.*For the respondents: *Samuel March*, Livingston, N.J.

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 Meyers Outfitters, Inc., a corporation and Charles Adler, 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. Respondent Meyers Outfitters, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 78 Springfield Avenue, Newark, N.J.

Respondent Charles Adler 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 been engaged in the purchasing, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail in the metropolitan New Jersey area.

PAR. 3. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been and now are in substantial competition in commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals in the sale of furniture, appliances and related products.

PAR. 4. In the course and conduct of their business as aforesaid, respondents regularly purchase furniture, appliances and other merchandise from suppliers and distributors in states other than New Jersey and then sell and offer to sell to residents of New Jersey said furniture, appliances and other merchandise and deliver said furniture, appliances and other merchandise to said residents of New Jersey. In the further course and conduct of their business, respondents also cause and have caused to be transmitted and received in the course of purchasing, selling, delivering and collecting payment for said furniture, appliances and other merchandise among and between the several States of the United States, checks, bills, letters, and other documents by the United States mails and other means in commerce.

PAR. 5. In the further course and conduct of their business, as aforesaid, respondents also disseminate and cause to be disseminated certain advertisements by the United States mail, and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to, advertisements inserted in newspapers of interstate circulation, for the purpose of inducing and which are likely to induce, directly or indirectly, the sale of its said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. Respondents through their advertising as set forth in Paragraph Five are likely to induce directly or indirectly, residents of New York State to come into the State of New Jersey for the purpose of purchasing furniture from respondents to be delivered to their residences outside the State of New Jersey.

PAR. 7. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 8. In the course and conduct of their business and for the purpose of inducing the sale and purchase of their merchandise, respondents have made and are now making numerous and various statements and representations in advertisements inserted in newspapers of general interstate circulation.

Typical and illustrative of the foregoing, but not all inclusive thereof, is the following:

3-Rooms New Furniture 3-Pc. Bedroom Set 3-Pc. Living Rm. 3-Pc. Dinette Set
All 3 Rooms-\$179—Free Delivery

In addition to the aforesaid statements and representations, respondents and their sales representative have made, and are now making

numerous oral statements and representations to customers and prospective customers regarding the merchandise to be sold and delivered by the respondents.

PAR. 9. By and through the use of the aforesaid statements, representations and others of similar import and meaning not specifically set out herein, respondents and their sales representative represent directly or by implication that:

1. The offer set forth in said advertisements was and is a bona fide offer to sell the advertised furniture of the kind therein described.
2. Three rooms of new furniture capable of adequately performing the function or purpose for which the furniture is advertised is available for sale.

PAR. 10. In truth and in fact:

1. The offer set forth in said advertisements is not a bona fide offer to sell furniture at the advertised price and of the kind therein described.
2. The three rooms of new furniture offered for sale at the advertised price is not capable of adequately performing the function and purpose for which the furniture is advertised for sale.

Therefore, the representations, acts and practices as set forth in Paragraph Eight were and are unfair, misleading and deceptive.

PAR. 11. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations, directly or by implication, 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 furniture from respondents' place of business by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondents, as alleged herein, were and are all to the prejudice and injury of the public and of respondents' competitors and 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 hereto 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 provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 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 Meyers Outfitters, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 78 Springfield Avenue, Newark, State of New Jersey.

Respondent Charles Adler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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 Meyers Outfitters, Inc., a corporation, its successors and assigns, and its officers, and Charles Adler, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or any other device in connection with the purchasing, advertising, offering for sale, sale and distribution of furniture and appliances, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly that any product or services are offered for sale when such is not a bona fide offer to sell such products or services.

2. Advertising or offering any products for sale for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondents maintain an adequate and readily available stock of said products.

3. Disparaging in any manner, or refusing to sell any product advertised.

4. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other merchandise.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

- a. the cost of publishing each advertisement including the preparation and dissemination thereof;
- b. the volume of sales made of the advertised product or service at the advertised price; and
- c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

It is further ordered, That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized in the advertising, promotion or sale of merchandise.

It is further ordered, That for a period of one year, respondents post in a prominent place in each salesroom or other area wherein respondents sell furniture or other products and services, a copy of this cease and desist order, with a notice that any customer or prospective customer may receive a copy on demand.

It is further ordered, That nothing contained in this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other municipal, state or federal agency or act as a defense to actions instituted by municipal, state or federal agencies.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents

engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising, and to all personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondents notify the Commission at least thirty (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 individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his 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 he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein 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 MATTERS OF

LEONARD F. PORTER, INC., ET AL.—DOCKET 8964
INDIAN ARTS & CRAFTS, INC., ET AL.—DOCKET 8965
J.L. HOUSTON, INC., ET AL.—DOCKET 8966
WESTERN NOVELTY CO., ET AL.—DOCKET 8967
HERMAN KRUPP, TRADING AS OCEANIC TRADING
COMPANY—DOCKET 8968
HEINZ LANGE, TRADING AS NORTHWEST ARTS AND
CRAFTS—DOCKET 8969