

It is ordered, That the "Petition to Reopen the Proceeding to Enlarge the Time for Compliance" be, and it hereby is, denied.

IN THE MATTER OF
WENDELKEN-SIMMINGER AND COMPANY T/A SIMS
FURNITURE CO., ET AL.

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

Docket C-2260. Complaint, May 5, 1975-Decision, May 5, 1975

Consent order requiring a Cincinnati, Ohio, seller and distributor of furniture, appliances and related products, among other things to cease misrepresenting the quantity of merchandise in stock; disparaging advertised products; failing to maintain adequate records, to disclose unit prices, and other relevant facts; using misleading sales plans. Further, respondents are required to post copies of the order in prominent locations within their store and maintain records of advertisements for a three-year period.

Appearances

For the Commission: *Allan M. Huss.*

For the respondents: *Saul M. Greenberg*, Cincinnati, Ohio.

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 Wendelken-Simminger and Company, a corporation, trading and doing business as Sims Furniture Company, and Ralph Mazer, individually and as an officer of said corporation, hereinafter sometimes 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 Wendelken-Simminger and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1625 Vine St., Cincinnati, Ohio. Respondent Wendelken-Simminger and Company is trading and doing business as Sims Furniture Company.

Respondent Ralph Mazer 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 purchasing, offering for sale, sale, and distribution of furniture, appliances, and related products to the public at retail in the greater Cincinnati, Ohio, and northern Kentucky areas.

PAR. 3. In the course and conduct of their business as aforesaid, respondents regularly maintain places of business within the State of Ohio and within States other than Ohio, where they offer for sale, sell, and distribute furniture, appliances, and related products.

In the further course and conduct of their aforesaid business, respondents also disseminate, and cause to be disseminated, certain advertisements by various means in commerce including, but not limited to, advertisements disseminated by electronic broadcast media, for the purpose of inducing, and which are likely to induce, directly or indirectly, the sale of their said products in commerce.

Therefore, at all times mentioned herein, respondents have been, and now are, in competition in commerce with corporations, firms, and individuals in the sale of furniture, appliances, and related products, and maintain, and have maintained at all times mentioned herein, 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 their aforesaid 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 disseminated by electronic broadcast media. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

* * * Sims is now offering four rooms of furniture * * * two bedrooms, a living room and a kitchen grouping * * * a house full of furniture for just \$333.
* * * you can buy three rooms [of furniture] for only \$288, and each room separately for just \$99.

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import and meaning but not specifically set out herein, respondents represent, directly or by implication, that:

1. The offers set forth in said advertisements were and are bona fide offers to sell the advertised furniture.
2. The amount of furniture offered in the groupings is adequate in and of itself to furnish an average room, without the need for additional pieces of furniture to be purchased.

PAR. 6. In truth and in fact:

1. The offers set forth in said advertisements, and other offers not

set forth in detail herein, were not, and are not, bona fide offers to sell groupings of furniture at the advertised price but, to the contrary, were and are made to induce prospective purchasers to visit respondents' place of business. When prospective purchasers, in response to said advertisements, attempt to purchase furniture at the advertised price, salesmen represent, either directly or by implication, that the advertised furniture is of poor quality and inferior in appearance and durability; and such salesmen make no effort to sell the furniture at the prices advertised. Rather, said salesmen, either directly or by implication, attempt to discourage the purchase of said advertised furniture and attempt to, and often do, sell other furniture at considerably higher prices.

2. The amount of furniture offered for sale in the advertisement is not adequate in and of itself to furnish an average room, without the need for additional pieces of furniture to be purchased.

Therefore, the representations, acts, and practices as set forth in Paragraphs Four and Five hereof were and are unfair, misleading, and deceptive.

PAR. 7. The use by 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. 8. In the course and conduct of their aforesaid business, respondents fail to display the retail selling price of each item advertised or offered for sale in their place of business, or to otherwise enable the customer to ascertain the retail selling price of each item prior to its purchase. Thus, respondents have failed to disclose a material fact, which, if known to certain customers, would be likely to affect their consideration of whether or not to purchase the items offered for sale.

PAR. 9. 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 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 Cleveland 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 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wendelken-Simminger and Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1625 Vine St., in the city of Cincinnati, State of Ohio. Respondent Wendelken-Simminger and Company trades and does business as Sims Furniture Company.

Respondent Ralph Mazer is an officer of 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.

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 Wendelken-Simminger and Company, a corporation, trading and doing business as Sims Furniture Company, its successors and assigns, and its officers, and Ralph Mazer, 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. 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.

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

3. 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.

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

5. Failing to disclose the number and type of the pieces included in a room grouping, in any advertisement which refers to room groupings.

6. Failing to post, clearly and conspicuously, upon each item to be sold, the retail selling price of each item.

7. Failing to disclose to the consumer, in writing on the sales invoice or sales contract, or any other written evidence of sale, the manufacturer, model number, description, and retail selling price of each item at the time each item is purchased.

8. Failing to maintain adequate records as will show:

- (a) Each advertised item identified by model number, manufacturer, description, and date(s) advertised; and

- (b) The number of sales made of each advertised product or service at the advertised price for each advertisement published or otherwise disseminated during the period of its publication or other dissemination, and for the six weeks immediately thereafter.

Said records shall be retained for three years from the date of the advertisement, and shall be made available to personnel of the Federal Trade Commission upon request.

It is further ordered, That respondents shall maintain, for a three (3) year period from the date of each advertisement, 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 (1) 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 respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged 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 respondent's current business address 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 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

JONEL PAY PLAN, INC., ET AL.