

IN THE MATTER OF
STEVENS BEDDING WAREHOUSE, INC., ET AL.

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

Docket C-2739. Complaint, Oct. 21, 1975—Decision, Oct. 21, 1975

Consent order requiring fourteen separately incorporated retail stores affiliated with as well as a Chicago, Ill., distributor of home furnishing products, among other things to cease misrepresenting savings available to customers; misrepresenting special or limited offers; misrepresenting merchandise as free; and failing to maintain adequate records.

Appearances

For the Commission: *Anne L. Draznin.*

For the respondents: *Merrill Freed, D'Ancona, Pflaum, Wyatt & Rikind, Chicago, Ill.*

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 Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., and Stevens Bolingbrook Bedding, Inc., corporations, and Norton Baran, as an officer and stockholder of said corporations, 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. Respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., Stevens Bolingbrook Bedding, Inc., are corporations

organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal office and place of business located at 4435 S. Oakley Ave., in the City of Chicago, State of Illinois. Respondent Norton Baran is an officer and stockholder of said corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of home furnishing products, including, but not limited to bedding, sleeper sofas, and related case and upholstered furniture, to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of advertisements by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements for said products by use of the United States mails, advertisements in newspapers of interstate circulation, advertisements in television and radio broadcasts of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

SUBSTANTIAL SAVINGS

* * * * *

TOTAL SELLOUT SAVE 28%-48% INCREDIBLE DISCOUNT PRICES

* * * * *

LAST 2 DAYS. END OF THE MONTH SALE. ANNUAL PRICE
SHATTERING SALE YOU HAVE BEEN WAITING FOR. DRASTIC
REDUCTIONS. TREMENDOUS REDUCTIONS.

* * * * *

NEVER BEFORE A SALE OF THIS TYPE ON NAME BRAND SLEEP
PRODUCTS

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MANUFACTURERS CLOSE OUT SALE OF THE YEAR. 4 DAYS ONLY.
THESE PRICES CANNOT BE REPEATED AFTER REMAINING
STOCKS ARE GONE

* * * * *

SUPER DISCOUNT WEEKEND SPECIAL. 3 DAYS ONLY

* * * * *

BRAND NAMES AT DISCOUNT PRICES AND YOU GET A BONUS

* * * * *

FREE 6 PIECE BEDDING PACKAGE WITH PURCHASE OF
ADVERTISED \$158 KING OR \$98 QUEEN SIZE BEDDING

* * * * *

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, with respect to and for the purpose of inducing the purchase of their merchandise, respondents and their salesmen, agents and representatives have represented and are now representing directly or by implication, that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.

2. Respondents' advertised offer is made for a limited time only.

3. Purchasers of respondents' merchandise would realize at least a stated minimum amount of savings from respondents' regular selling prices.

4. Purchasers of respondents' products would receive free gifts or bonuses with the purchase of respondents' advertised products.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. The prices advertised by respondents are the usual and customary purchase prices of the products.

2. Respondents' advertised offers are not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.

3. Purchasers of respondents' merchandise do not realize stated minimum amounts of savings over the price at which said merchandise has been sold at retail by the respondents in their recent, regular course of business. The stated percentage of savings constitutes an implied comparison between the manufacturers' suggested retail prices

for such merchandise and respondents' usual and customary selling prices.

4. Purchasers of respondents' products do not receive free gifts or bonuses with their purchases of advertised home furnishings and bedding products.

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

PAR. 7. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said home furnishings and bedding products offered by respondents by reason of said erroneous and mistaken beliefs.

PAR. 8. 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 and distribution of home furnishings, bedding products and service of the same general kind and nature as those sold by respondents.

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 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 Chicago 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. Respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., and Stevens Bolingbrook Bedding, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois with their executive offices and warehouse located at 4435 S. Oakley Ave., Chicago, Ill.

Respondent, Norton Baran, is an officer and stockholder of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his address is the same as that of said corporations.

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 Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., Stevens Bolingbrook Bedding, Inc., their successors and assigns, and officers, and Norton Baran, as an officer and stockholder of said corporations and as an officer and stockholder of any other corporation which would stand in the same or a substantially similar relationship in operating, structure and business relationship to the

named corporate respondents and to him as the respondents do to each other at the date of service of this order and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, sale or distribution of home furnishings and bedding products or any other products or merchandise advertised, sold or offered for sale or distribution in conjunction therewith in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Using the words "BUY NOW AND SAVE," "DRASTIC REDUCTIONS," "SUPER DISCOUNT WEEKEND SPECIAL," or any other words of similar import not specifically set forth herein, which represent, directly or indirectly, orally or in writing, that any savings are afforded the public in the purchase of merchandise from respondents at respondents' advertised price unless the price of such merchandise being sold or 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.

2. Representing, directly or indirectly, orally or in writing, that stated minimum amounts of savings are afforded the public in the purchase of merchandise from the respondents at respondents' advertised price, unless, in fact, the price at which merchandise is offered constitutes, at least, the stated minimum amount of reduction from the price at which said merchandise has been usually and customarily sold at retail by the respondents in the recent, regular course of business.

3. Using the words "LAST 2 DAYS," "4 DAYS ONLY," "WEEKEND SPECIAL" or any other words of similar import not specifically set forth herein, which represent that the products advertised are available to the public at the terms, conditions, and prices advertised for a limited time only, when in fact, said products have been offered for sale or sold by respondents at terms, conditions, and prices similar to those stated in the advertisements at times other than those set forth therein in the recent, regular course of respondents' business.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or service advertised, sold, offered for sale or distributed by respondents is furnished "free" or at no cost to the purchaser, when, in fact, the cost of such "free" merchandise or service is directly or indirectly included in the selling price of respondent's products that are

advertised, sold, offered for sale or distributed to the purchaser in conjunction with said "free" merchandise or service.

5. Representing, directly or indirectly, orally or in writing, that any merchandise or service is being offered as a "gift," "without charge," "bonus," or other words or terms which tend to convey the impression to the public that the merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

6. Failing to maintain and produce for inspection or copying for a period of three (3) years 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, 2 and 3 of this order are based, and

(b) 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 4 and 5 of this order can be determined.

7. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the sale or offering for sale of any product and engaged in any aspect of the preparation, creation or placing of advertising and failing to secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent corporations shall forthwith deliver a copy of this order to each of their operating divisions.

It is further ordered, That during the period from the date of service of this order to the expiration of 10 years from such date:

(a) respondents promptly notify the Commission within five (5) business days of the dissolution of a named corporate respondent which does not result in the emergence of a successor corporation or of the creation by incorporation, of a new retail outlet which would stand in the same or a substantially similar relationship in operation, structure and business relationship to the named corporate and individual respondents as the respondents do to each other at the date of service of this order, and

(b) respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, with the exception of those changes enumerated in (a) above, 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 respondents which may affect compliance obligations arising out of the order.

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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.
