

IN THE MATTER OF
FOREST CITY ENTERPRISES, INC. T/A FOREST CITY
MATERIALS COMPANY

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

Docket C-2793. Complaint, Feb. 20, 1976—Decision, Feb. 20, 1976

Consent order requiring a Cleveland, Ohio, seller and distributor of appliances and television sets, among other things to cease misrepresenting prices as special or reduced unless such prices are bona fide reductions from the regular selling prices; misrepresenting the duration of sales; and failing to disclose to consumers, where manufacturers have discontinued particular models, that such models are discontinued.

Appearances

For the Commission: *Melvin H. Wolovits* and *Paul K. Trause*.

For the respondent: *Albert L. Reisenfeld*, Cleveland, 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 Forest City Enterprises, Inc., trading and doing business as Forest City Materials Company, a corporation, hereinafter sometimes 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. For the purposes of this proceeding, "discontinued model(s)" is defined as those model(s) which have been supplanted, superseded, or succeeded by a newer or later model and which no longer appear in the prevailing literature of the manufacturer of said product.

PAR. 2. Respondent Forest City Enterprises, Inc., trading and doing business as Forest City Materials 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 10800 Brookpark Rd., in the city of Cleveland, State of Ohio.

PAR. 3. Respondent is now, and for some time last past has been, engaged in the business of advertising, offering for sale, sale, and distribution of appliances and television sets to members of the purchasing public.

Complaint

87 F.T.C.

PAR. 4. In the course and conduct of its aforesaid business, respondent has disseminated and caused the dissemination of certain advertisements in commerce or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, including, but not limited to, advertisements in daily newspapers of general circulation, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of television sets and appliances by the public.

PAR. 5. In the further course and conduct of its business, and for the purpose of inducing the purchase of television sets and appliances, respondent has made, and is now making, numerous statements and representations in its advertising and promotional materials and sales presentations with respect to the prices of its products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

Only ONCE IN A BLUEMOON SALE!

18" Insta-Matic Color Roll-About
MOTOROLA TV
\$314 45.95 Off!

* * * * *

SALE
ZENITH CHROMACOLOR
19" Color Portable
\$348

Sale Prices In Effect Thru (Date)

* * * * *

BIG 4-DAY SALE
\$297
Gibson No-Frost 15 Cu.
Ft. Upright Freezers

* * * * *

PAR. 6. 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, respondent has represented, and is now representing, directly or by implication, that:

(1) Television sets and appliances are being offered for sale at special or reduced prices, and savings are thereby afforded to their purchasers because of reductions from respondent's regular selling price.

(2) Respondent's advertised offers are made for a limited period of time.

PAR. 7. In truth and in fact:

(1) A substantial number of respondent's television sets and appliances advertised, offered for sale or sold at special or reduced prices, are not being so offered for sale or sold, since respondent's advertised specials and reduced prices and its regular selling prices are the same or substantially the same. Consequently, purchasers are not afforded significant savings from respondent's regular selling price.

(2) Respondent's advertised offers are not of a limited duration.

PAR. 8. In the further course and conduct of respondent's business, and for the purpose of inducing the purchase of television sets and appliances, a substantial number of which have been discontinued, respondent has failed and is currently failing to disclose in its advertising and floor displays which of these said products are discontinued, which is a material fact in the purchasing of said products.

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

PAR. 9. In the course and conduct of its 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 sale and distribution of television sets and appliances of the same general kind and nature as those sold by respondent.

PAR. 10. 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 complete, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 11. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Cleveland Regional 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Forest City Enterprises, Inc., a corporation, trading and doing business as Forest City Materials Company, is 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 10800 Brookpark Rd., in the city of Cleveland, State of Ohio.

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 Forest City Enterprises, Inc., a corporation, trading and doing business as Forest City Materials Company, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of appliances and television sets in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, through the use of terms such as "was," "sale," "off," or in any other manner, that any price for respondent's television sets and appliances is a special price or a reduction from a former price unless such price constitutes a reduction from either the established selling price at which substantial sales were made by respondent in the recent past or the price at which

the product had been offered for sale by respondent for a substantial period of time.

2. Misrepresenting the period of time during which any television set or appliance is available at a special or reduced price.

3. Representing, directly or by implication, that the sale or special price is a savings or reduction from a former price unless the respondent clearly and conspicuously discloses:

- a. The duration for which the sale or special is in effect; and
- b. The former price; or
- c. The stated dollar or percentage of reduction in price.

4. Advertising, offering for sale or selling any television set or appliance which has been discontinued by the manufacturer and which has been purchased by respondent after discontinuance unless respondent discloses clearly, conspicuously, without ambiguity, and in close proximity to said product and advertisement:

a. That said television set(s) or appliance(s) is a "discontinued model."

b. The year in which the television set(s) or appliance(s) was discontinued.

5. Advertising, or offering for sale at a special or reduced price, any television set or appliance which has been discontinued by the manufacturer and which respondent knows has been discontinued, unless respondent clearly, conspicuously, without ambiguity and in close proximity to said product discloses:

a. That said television set or appliance is a "discontinued model."

b. The year in which the television set or appliance was discontinued.

Respondent shall be deemed in compliance with paragraph five (5) of this order, without making the required disclosures therein, for a one (1) year period following the effective date of this order, where respondent prepares an ad containing a television set or appliance and subsequent to the preparation of that ad and within thirty (30) days prior to its publication, the manufacturer discontinues such television set or appliance contained therein.

For the purposes of this order, if an advertisement contains only discontinued models, the required disclosures will be deemed to be in close proximity to said models if the disclosures appear at least once on each page of the advertisement.

It is further ordered, That respondent shall maintain, for at least a three (3) year period following the effective date of this order, records which disclose the factual basis for any representation of special or sale prices for any television set or appliance.

It is further ordered, That a copy of this order be delivered to all

present and future personnel (a) engaged in a supervisory capacity in the design and creation of advertising material for respondent's television sets or appliances and (b) engaged in a management or supervisory capacity in the sale of television sets and appliances. Respondent shall secure from each said person a signed statement acknowledging receipt of this order.

It is further ordered, That respondent 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 this order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF
TEXORA INTERNATIONAL CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND WOOL PRODUCTS
LABELING ACTS

Docket C-2794. Complaint, Feb. 23, 1976—Decision, Feb. 23, 1976

Consent order requiring a New York City importer and seller of wool products, among other things to cease misrepresenting the wool and other fiber content of their fabrics; and, to notify their customers that the fabrics they have purchased were misbranded. Further, respondents are prohibited from importing wool products except upon filing a bond with the Secretary of the Treasury in a sum double the value of the products and any duty thereon.

Appearances

For the Commission: *Jerry R. McDonald.*

For the respondents: *Krakower & Weissman*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Texora International Corp., a corporation, and Max Kovner, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, 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 Texora International Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the Territory of the Virgin Islands, with its principal office and place of business located at 450 Seventh Ave., New York, New York.

Respondent Max Kovner 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.

Respondents are now, and for some time last past have been, engaged in the importation and sale of wool products including but not limited to wool fabrics.

PAR. 2. Respondents, now and for some time last past, have imported