

IN THE MATTER OF

LEVITZ FURNITURE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2835. Complaint, Aug. 30, 1976 — Decision, Aug. 30, 1976*

Consent order requiring a Miami, Fla., furniture retailer, among other things to cease misrepresenting and/or failing to disclose pertinent information regarding prices, sales, limited offers, warranties, construction, composition and use of its products; failing to make timely repairs, adjustments, and refunds; and failing to maintain appropriate records. Additionally, respondent must provide its advertising agencies with copies of the F.T.C.'s news release concerning this order for a one-year period.

Appearances

For the Commission: *Richard F. Kelly* and *Alan L. Cohen*.

For the respondent: *Henry P. Sailer, Theodore L. Garrett, Covington & Burling*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Levitz Furniture Corporation, 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. Respondent Levitz Furniture Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 1400 N.W. 167th St., Miami, Florida.

Said respondent formulates, directs and controls the acts and practices of its organizational division, Classic House, and its wholly-owned subsidiary corporations, Levitz Furniture Company of the Eastern Region, Inc., Levitz Furniture Company of the Midwest, Inc., Levitz Furniture Company of the Pacific, Inc., Levitz Furniture Company of Arizona, Inc., Levitz Furniture Company of Texas, Inc. and Levitz Furniture Company of Washington, Inc.

Respondent formulates, directs and controls, directly or through its wholly-owned subsidiaries, the acts and practices of a chain of some

sixty (60) retail stores, located in twenty-seven (27) States of the United States, including the acts and practices hereinafter set forth.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of household furniture. Respondent is one of the largest furniture retailers in the United States with sales from its retail outlets in 1974 approximating \$350 million.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent now causes, and for some time last past has caused, advertising layouts, sales memoranda, policy directives, and other documents and communications to be transmitted, by the United States mail, to and from respondent's offices and said retail stores located in various States of the United States.

In the further course and conduct of its business, respondent sells and distributes and has sold and distributed household furniture in commerce by causing said furniture to be shipped from places of business of its several suppliers, located in various States of the United States, to storage points and to said retail stores for sale to the purchasing public, located in States other than those from which said shipments originate. In the further course and conduct of its business, respondent now causes and has caused said household furniture to be shipped across States lines from its retail stores to purchasers located in various States of the United States other than those from which said shipments originate and in the District of Columbia.

In the further course and conduct of its business, respondent now causes, and has caused, advertisements for household furniture to be published in media of interstate circulation and to be broadcast by television and radio stations having sufficient power to carry such broadcasts across State lines, which are designed and intended to induce persons to purchase said household furniture.

Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of its household furniture, respondent has made, and is now making, numerous statements and representations by means of television and radio broadcasts by stations located in various States of the United States and the District of Columbia, having sufficient power to carry such broadcasts across State lines, by means of advertisements inserted in newspapers of interstate circulation, by means of tags affixed to merchandise on display in respondent's showrooms, and by means of oral statements and representations of its

salesmen and other agents and employees to prospective customers with respect to its products and services.

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

* * * * *

- (1)(a) "The President Only Froze Prices* * *Levitz Actually *Lowers* Prices! 'PHASE 5' PRICE REDUCTION SALE!

Documented Price Reductions *Below Freeze* Levels on These and Thousands More Unadvertised Items* * **While Present Warehouse Stock Lasts!!!*

SPECIAL
NOTICE!

Due to the tremendous savings all items must be sold on a first come first served basis! * * *great savings* * *."

* * * * *

- (b) "Levitz Lowers Prices On Thousands of Famous Brand Furniture Items"

* * * * *

- (c) "New Reduced Price"

* * * * *

- (2)(a) "INVENTORY TAX SALE We must pay a tax on all furniture in our inventory as of March 1* * *. Help us reduce our inventory and we will pass the savings on to you."

* * * * *

- (b) "After-Inventory Sale! Look What We Found When We Took Inventory! Hundreds of furniture finds that must be moved out to balance our stock* * *right now! The prices are incredibly low, the savings huge!"

* * * * *

- (3) "15 Year Warranty"

* * * * *

- (4) "Selling Direct to the Public"

Complaint

88 F.T.C.

* * * * *

- (5) "Item *BASSET KING HDBD*.
2 WAYS TO BUY!

No. 1
LEVITZ
DELUXE
WAY * * * \$139.95

Designed for the Customers Who Want the Utmost in Services!
Free predelivery preparation, free time scheduled delivery, free
set up in home, free storage for faster delivery, free services in
your home, approvals, free 30 day charge, free decorator
services, custom orders!

No. 2
LEVITZ
WAREHOUSE
WAY * * * \$98

Designed for Those Customers Who Want Maximum Savings!
Pick up price on our stock, in the original factory containers!
Delivery and all other services available as extra options!"

* * * * *

- (6) "ASHTRAY
Retail \$9.40
Pick-Up \$7.66"

* * * * *

- (7) "CHEST
~~\$69.95~~ \$49.00"

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, separately and in connection with the oral statements and representations of respondent's salesmen to customers and prospective customers, respondent has represented, directly or by implication:

(1) By and through the use of the words "sale" and "reductions," as set out in Paragraph Four (1), and other words of similar import and meaning not specifically set out herein, separately and in conjunction with the words "tremendous savings," "great savings," and by and

through the use of the words "Levitz Lowers Prices," "New Reduced Price," and other words of similar import and meaning not specifically set out herein that:

(a) Said merchandise could be purchased at reduced prices, and purchasers were thereby afforded savings from respondent's regular selling prices.

(b) Said merchandise was available at reduced selling prices for only a limited period and would return to and, for a reasonable period of time, remain at some substantially higher amount after the expiration of the limited period.

(c) The price at which such merchandise was being offered constituted a significant reduction from respondent's previously established regular selling price.

(2) By and through the use of the words "Documented Price Reductions* * *on Thousands More Unadvertised Items," "Levitz Lowers Prices on Thousands of Famous Brand Furniture Items," as set out in Paragraph Four (1), and other words of similar import and meaning not set out specifically herein, that respondent has reduced the price, in an amount not so small as to be insignificant, on at least two thousand (2,000) different furniture items.

(3) By and through the use of the words "Inventory Tax Sale" and "After Inventory Sale," as set out in Paragraph Four (2), and other words of similar import and meaning not specifically set out herein, that respondent has reduced prices as a consequence of the unusual sale event and, thereby, implied that the public should act immediately to take advantage of these unusual circumstances.

(4) By and through the use of the words "15 year warranty," as set out in Paragraph Four (3), and other words of similar import and meaning not specifically set out herein, that certain of respondent's products were unconditionally guaranteed for a period of fifteen years.

(5) By and through the use of the words "direct to the public," as set out in Paragraph Four (4), and other words of similar import and meaning not specifically set out herein, that respondent was a wholesaler or wholesale distributor.

(6) By and through the use of said tags and representations as set out in Paragraph Four (5)-(7), and other words of similar import and meaning not specifically set out herein, that:

(a) The No. 1 Levitz Deluxe Way price was a bona fide selling price of respondent;

(b) The retail price was a bona fide selling price of respondent; or at the time it made that representation, respondent had a reasonable basis from which to conclude that the retail price was the price being charged

by other furniture retailers in respondent's trade area for identical merchandise and services; and

(c) The crossed out price was a previously established former selling price of respondent.

PAR. 6. In truth and in fact:

(1) In some instances, respondent's merchandise was not being offered for sale at reduced prices. To the contrary:

(a) Many of respondent's represented reduced selling prices were not returned to, or if returned did not for a reasonable period of time remain at, some other substantially higher amount. Instead said prices remained at or near, or subsequently returned to or near, the represented reduced prices. Thus the period during which the reduced prices were available, was not, in these instances, limited as stated in said advertisements.

(b) Many of respondent's represented reduced prices were not reduced. Where respondent did reduce its regular selling prices, the amount of the reduction was, in some instances, insignificant.

(2) Respondent did not reduce the price, in an amount not so small as to be insignificant, on at least two thousand (2,000) different furniture items. Instead, respondent reduced a substantially lesser amount of items.

(3) In some instances, respondent did not reduce prices as a consequence of the special event. Rather, said sale events were used by respondent for the purpose of creating a sense of urgency in the purchasing public.

(4) Certain of respondent's products were not unconditionally guaranteed. To the contrary, such guarantees were subject to substantial conditions and limitations not disclosed in respondent's advertisements.

(5) Respondent is not a wholesaler or a wholesale distributor.

(6) (a) The No. 1 Levitz Deluxe Way price was not a bona fide selling price of respondent. Few, if any, sales were made at said price.

(b) The retail price was not a bona fide selling price of respondent. Few, if any sales were made at said price. Nor, did respondent have a reasonable basis from which to conclude that the retail price was the price being charged for identical merchandise and services by other retailers in the respondent's trade area;

(c) The crossed out price was not a previously established former selling price of respondent. No sales were made at said price.

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

PAR. 7. In the course and conduct of its business, and for the purpose

of inducing others to purchase its furniture, respondent has made by means of television and radio broadcasts and by means of advertisements inserted in newspapers various statements and representations with respect to the composition of its household furniture.

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

- (1) "Walnut," "Pecan," "Solid Rock Maple;"
- (2) "Walnut Finish," "Pecan Finish," "Finished in Rich Oak;"
- (3) "Foam;"
- (4) "Spanish," "Italian," and "French."

PAR. 8. By and through the use of the above-quoted statements and representations, and by use of other statements and representations of similar import and meaning, not expressly set out herein, respondent has represented, directly or by implication, that:

- (1) The exposed surfaces of certain of its furniture referred to in Paragraph Seven (1) are constructed of solid walnut, solid pecan, and solid maple, respectively;
- (2) The exposed surfaces of certain of its furniture referred to in Paragraph Seven (2) are constructed of solid walnut, solid pecan, and solid oak, respectively;
- (3) The stuffing of certain of its furniture referred to in Paragraph Seven (3) is composed of solid latex foam rubber;
- (4) Certain of its furniture referred to in Paragraph Seven (4) is of Spanish, Italian or French origin.

PAR. 9. In truth and in fact, in many instances:

- (1) The exposed surfaces of such furniture referred to in Paragraphs Seven (1) and Eight (1) were not constructed of solid woods. Instead, the exposed surfaces were constructed of a combination of veneers of the woods named and other woods;
- (2) The exposed surfaces of such furniture referred to in Paragraphs Seven (2) and Eight (2) were not constructed of woods. Instead, parts of the exposed surfaces were constructed of plastic or other material simulating wood;
- (3) The stuffing of such furniture referred to in Paragraphs Seven (3) and Eight (3) was not composed of latex foam rubber. Instead, the stuffing was composed of polyurethane foam;
- (4) Such furniture referred to in Paragraphs Seven (4) and Eight (4) was not imported from Spain, Italy or France. Instead, such furniture was manufactured in the United States.

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

PAR. 10. A substantial amount of respondent's furniture which is

advertised, displayed, offered for sale, and sold has the appearance of being made of solid wood but contains exposed surfaces in part of veneered construction. The fact of such veneered construction was not, in many instances, clearly and conspicuously disclosed in respondent's advertising and on such furniture or on tags or labels attached thereto.

Respondent's practice of advertising, displaying, offering for sale, and selling furniture of veneered construction which has the appearance of being made of solid wood, without clear and conspicuous disclosure in all advertising wherein said furniture was depicted with the appearance of being made of solid wood and on such furniture, or on a tag or label attached thereto, of such veneered construction, was misleading and deceptive and had the capacity and tendency to mislead members of the purchasing public in the mistaken belief that said furniture is constructed of solid wood.

PAR. 11. A substantial amount of respondent's furniture which is advertised, displayed, offered for sale, and sold has the appearance of being made of wood but contains substantial exposed surfaces composed of plastic or other materials not possessing a natural wood growth structure. In many instances, clear and conspicuous disclosure was not made in respondent's advertising and on such furniture, or on tags or labels attached thereto, that parts of the exposed surfaces of the furniture are made of plastic or other materials simulating wood, or in the alternative, that such parts are not of wood composition.

Respondent's practice of advertising, displaying, offering for sale and selling furniture containing exposed surfaces made of plastic or other materials not possessing a natural wood growth structure, but having the appearance of being wood, without clear and conspicuous disclosure in all advertising wherein said furniture was depicted with the appearance of being wood and on such furniture, or on tags or labels attached thereto, of the true nature of such plastic or other materials simulating wood, or in the alternative, without clear and conspicuous disclosure that such parts are not of wood, was misleading and deceptive and had the capacity and tendency to mislead members of the purchasing public in the mistaken belief that said furniture is constructed solely of wood.

PAR. 12. In the course and conduct of its business, respondent sells large quantities of merchandise for delivery in original factory cartons. In some instances, said furniture is delivered to purchasers with damages or defects and/or lacking one or more components or parts necessary to allow the purchased item to function as intended. In some instances, respondent has failed to promptly remedy the deficiency or refund the customer's money.

Therefore, the acts and practices of respondent as set forth above, were and are, unfair, misleading, and deceptive.

PAR. 13. In the course and conduct of its business, respondent purchases repossessed merchandise, exchanges new merchandise for used and places this repossessed and used merchandise in a section of its selling floor known as the "Outlet" or "As-Is" section.

Said merchandise, when placed in respondent's "Outlet" or "As-Is" section of its selling floor, has in many instances been offered for sale and sold to consumers without affirmative and specific indication that this merchandise is used or repossessed.

PAR. 14. The acts and practices of respondent as alleged in Paragraph Thirteen of failing to disclose the material fact that certain merchandise offered for sale in the "As-Is" or "Outlet" section of the selling floor was used, has had the tendency and capacity to mislead prospective customers into the erroneous and mistaken belief that such merchandise was new and into the purchase of such merchandise by reason of such erroneous and mistaken belief.

Therefore, respondent's failure to disclose such material facts, was and is, unfair, misleading and deceptive.

PAR. 15. 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 or affecting commerce, with corporations, firms and individuals in the sale and distribution of household furniture of the same general kind and nature as that sold by respondent.

PAR. 16. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices, and its failure to disclose material facts, as aforesaid, 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 and services by reason of said erroneous and mistaken belief.

PAR. 17. The aforesaid 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 methods of competition in or affecting commerce and 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 Washington, D.C. 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, as amended; 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 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 Levitz Furniture Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 1400 N.W. 167th St., Miami, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, Levitz Furniture Corporation, a corporation, 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 and distribution of household furniture, or of any other products or services, 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 "sale," "reductions," or other words of similar import or meaning, in conjunction with the offering of multiproducts in advertisements where all of the items are not reduced from respondent's former price, unless the words "sale," "reductions," or other words of similar import or meaning are clearly and conspicuously

qualified by a statement which indicates that all items offered are not reduced, and unless the items that are not reduced are clearly and conspicuously set off and identified.

(2) Representing, directly or by implication, orally or in writing, that respondent has reduced its prices on all or part of its merchandise, unless the price of such merchandise being 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 respondent for a reasonably substantial period of time in the recent, regular course of its business, and unless the dollar or percentage amount of each reduction is clearly and conspicuously disclosed on tags or labels affixed to such merchandise.

(3) Representing, directly or by implication, orally or in writing, that a reduced sale price is applicable to certain goods, unless such representation is true and unless, for all advertised goods:

(a) said goods have not been advertised at the same or substantially the same price during the thirty (30) days preceeding the first day of such sale, or

(b) respondent clearly and conspicuously discloses in said advertisements (in immediate conjunction with any specifically advertised goods) and on tags or labels affixed to said goods that the advertised sale price is a repeat sale price.

(4) Representing, directly or by implication, orally, or in writing, that respondent has lowered prices as a result of some unusual circumstances, unless said representation is true.

(5) Representing, directly or by implication, orally, or in writing, that, to take advantage of an offer, customers must act within a limited period of time, unless said representation is true.

(6) Failing to maintain and produce for inspection or copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records which disclose the facts upon which any savings claims, sales claims and other similar representations as set out in Paragraphs One through Five of this order are based. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(7) Representing, directly or by implication, orally or in writing, that any of respondent's products or merchandise are warranted or guaranteed unless the nature, extent and duration of the warranty or guarantee, the identity of the warrantor or guarantor, and the manner in which the warrantor or guarantor will perform thereunder, are clearly and conspicuously disclosed in immediate conjunction therewith, and unless respondent has the bona fide intention to promptly and fully

perform all of its obligations and requirements represented under the terms of each such warranty or guarantee.

(8) Using the words "direct to the public," or any other words of similar import and meaning, in any advertisements or any other material soliciting orders, or on signs in or affixed to any of respondent's places of business open to the public, or representing, directly or by implication, orally or in writing, that respondent is a manufacturer or wholesaler.

(9) Representing, directly or by implication, orally or in writing, that respondent's merchandise is offered for sale at a specified price, unless said price is a bona fide selling price of respondent.

(10) Representing, directly or by implication, orally or in writing, that by purchasing any merchandise or services of respondent, customers are afforded savings amounting to the difference between respondent's stated price and the price of others in respondent's trade areas or a manufacturer's suggested list price, unless, at the time of such representation, respondent has a reasonable basis for making such comparison.

Such reasonable basis shall consist of a determination of prices in respondent's trade area.

In making such determination, respondent must ascertain that:

(a) a substantial quantity of the compared product or service is being offered for sale or sold in the trade area at or above the represented price; and

(b) the compared product or service is the same and is offered with the same services, unless respondent's representations clearly and conspicuously disclose the differences in the product and in the services offered.

(11) Making any comparison, directly or by implication, orally or in writing, between a price at which a product or service is offered for sale and some other higher reference price, unless both the product or service and the nature of the reference price are clearly and conspicuously disclosed in immediate conjunction therewith.

(12) Using the terms "Walnut," "Pecan," "Maple" or any other wood name, or any other terms of similar import or meaning, to describe furniture not having all exposed surfaces constructed of solid wood of the type named; *provided, however*, that wood names may be nondeceptively used to describe the type of wood used in wood veneer surfaces of furniture if clear and conspicuous disclosure is made in immediate conjunction with the wood name that the wood name refers to the veneer composition; and *provided that*, when the described furniture also has exposed surfaces of solids or veneers of wood other than the type named, an additional clear and conspicuous disclosure is made in

immediate conjunction with the wood name (a) of the composition of the other exposed veneered and solid parts or, in the alternative, (b) of the exact locations of the wood name veneers.

(13) Using the terms "Walnut Finish," "Pecan Finish," "finished in rich oak" or any other wood name, or any other terms of similar import or meaning to describe furniture not having all exposed surfaces constructed of solid wood of the type named; *provided, however*, that wood names may be nondeceptively used to describe the grain design, color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named if clear and conspicuous disclosure is made in immediate conjunction therewith that the wood name used is descriptive of the grain design, color or other simulated finish.

(14) Using the term "foam" or any other terms of similar import or meaning to describe furniture stuffing or mattresses, or parts thereof, not composed of latex foam rubber; *provided, however*, that the word "foam" may be nondeceptively used to describe furniture stuffing or mattresses, or parts thereof, composed of foam of a composition other than latex rubber if clear and conspicuous disclosure is made in immediate conjunction therewith of the kind of foam used.

(15) Using the terms "Spanish," "Italian" and "French," or other terms indicative of foreign origin, as descriptive of furniture manufactured in the United States unless in immediate conjunction therewith it is clearly and conspicuously disclosed that such terms apply to the style of the furniture and not the country or region of its origin; *provided, however*, that nothing in this paragraph shall prohibit respondent from using the terms "French Provincial," "Italian Provincial" and similar terms which have acquired a secondary meaning descriptive of the style of furniture and considered to be nondeceptive by the Commission's Guides for the Household Furniture Industry.

(16) Advertising, displaying, offering for sale, selling, or placing in the hands of others for display or sales purposes any furniture having the appearance of being made of solid wood, but containing exposed surfaces of veneered construction, without clear and conspicuous disclosure of such veneered construction in all advertising wherein said furniture has the appearance of being made of solid wood, and on such furniture or on tags or labels attached thereto.

(17) Advertising, displaying, offering for sale, selling, or placing in the hands of others for display or sales purposes any furniture having the appearance of being made of wood, but containing exposed surfaces composed in whole or in part of plastic, or other materials not possessing a natural wood growth structure, without clear and conspicuous disclosure that such exposed surfaces are made of plastic,

or other materials simulating wood, or in the alternative, without clear and conspicuous disclosure that such exposed surfaces are not wood; such disclosures to be made (a) in all advertising wherein said furniture has the appearance of being made of wood, and (b) on such furniture or on a tag or label attached thereto.

(18) Misrepresenting, in any manner, or by any means, directly or indirectly, the kind or nature of the wood or other materials used in the manufacture of furniture or any part thereof.

(19) Failing to inform all customers at the time of sale that if furniture is delivered in a defective, damaged or incomplete condition, and the customer so notifies respondent within three business days of the receipt thereof, and respondent does not, within five business days thereafter, remedy such defect, damage or condition, the customer has the right to obtain a refund of all monies by permitting respondent to reclaim such merchandise in the condition in which it was delivered. Written notice of this right will be clearly and conspicuously furnished on the front of each customer's sales receipt. *Provided, however*, that this paragraph shall not apply to merchandise sold "as is" if those words conspicuously appear on the sales receipt.

(20) Failing to refund promptly all monies paid by customers entitled to such refund under the provisions of Paragraph Nineteen hereof.

(21) Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records to disclose the facts pertaining to the receipt, handling and disposition of each communication from a customer, oral and written requesting contract cancellation, refund, replacement or repair, pursuant to Paragraphs Nineteen and Twenty hereof. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(22) Failing to, if for any reason respondent refuses to cancel a contract, repair or replace an item, or refund monies when requested by a customer pursuant to Paragraphs Nineteen and Twenty hereof, specify in writing with particularity the reason(s) for denial of the request and place copies of the written reason(s) for denial of the request in a separate file set up for this purpose along with copies of all documents related to the transaction in question, including correspondence to and from the customer and notes relating to phone conversations with the customer. This file will be maintained and produced for inspection and copying upon demand by the Federal Trade Commission or its representatives for a period of two (2) years. This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of the order.

(23) Failing, in connection with the offering for sale or sale of used

merchandise, to clearly and conspicuously disclose the fact that such merchandise has been previously used:

- (a) in all advertising, sales and promotional literature;
- (b) on the used merchandise, with sufficient permanency as likely to remain thereon until sale to the ultimate consumer; and
- (c) on customer sales receipts utilized for the sale of such used merchandise.

(24) Misrepresenting, in any manner, the nature, extent or degree of use of any merchandise offered for sale by respondent.

(25) Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, for a period of two (2) years, adequate records which will show:

- (a) all communications to or from respondent concerning the processing, offering for sale and sale of used furniture; and
- (b) all records prepared in the processing of, offering for sale and sale of used merchandise.

This recordkeeping requirement shall cease to be in effect five (5) years after the effective date of this order.

It is further ordered, That respondent 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 for the purpose of obtaining leads for the sale of household furniture or utilized in the advertising, promotion or sale of household furniture and other merchandise.

It is further ordered, That respondent, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondent, in connection with the sale of household furniture and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the offering for sale, sale of any product or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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 respondent shall within sixty (60) days after service of this order upon respondent file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Commissioner Clanton not participating; Commissioner Dole not participating by reason of absence.

IN THE MATTER OF
KANE-MILLER CORP., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 8 OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 9034. Complaint, June 17, 1975 — Decision, Sept. 1, 1976

Consent orders requiring two manufacturers and sellers of meat and meat products, Kane-Miller Corp. of Tarrytown, N.Y., and United Brands Co. of New York City, among other things, to cease permitting individuals to simultaneously serve on their boards of directors and those of their competitors. Further, respondents are required to establish procedures designed to detect the existence of unlawful interlocking directorates; and for a period of five years, obtain annually written certification from current and prospective board members that they are not serving on the boards of competitive companies. The complaint as to the individual respondent, Joseph M. McDaniel, Jr., was dismissed by order of the Commission dated May 6, 1976, upon his resignation from the board of directors of Kane-Miller Corp.

Appearances

For the Commission: *Joseph Tasker, Jr., Ronald A. Bloch and Clinton R. Batterton.*

For the respondents: *Wald, Harkrader & Ross, Washington, D.C. Kaye, Scholer, Fierman, Hays & Handler, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kane-Miller Corp. (hereinafter Kane-Miller) is a New York corporation, and maintains its principal office at 555 White Plains Rd., Tarrytown, New York. Kane-Miller has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent United Brands Co. (hereinafter United Brands) is a New York corporation, and maintains its principal office at 245 Park Ave., New York, New York. United Brands has capital, surplus, and undivided profits aggregating more than one million dollars, and is