

Complaint

89 F.T.C.

IN THE MATTER OF

MELVIN S. LANDOW, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2886. Complaint, May 9, 1977—Decision, May 9, 1977*

This consent order, among other things, requires the former controlling officers of a now bankrupt appliance store chain (Kennedy and Cohen, Inc.) to cease misrepresenting pricing and savings claims; and cease using bait and switch tactics, or any other unfair or deceptive strategy to promote sale of goods and services. Additionally, respondents are required to conspicuously post disclosure notices and maintain relevant records as prescribed in the order.

Appearances

For the Commission: *H. Marshall Korschun and Thomas D. Wilson, Jr.*

For the respondent: *Harris J. Buchbinder, Reiseman & Buchbinder, Miami, Fla.*

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, as amended, the Federal Trade Commission, having reason to believe that Melvin S. Landow and Dean Willman, individually, hereinafter referred to as respondents, have violated the provisions of said Act, as amended, 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 Melvin S. Landow and Dean Willman are individuals and were officers and/or directors of Kennedy and Cohen, Inc., a Florida corporation. The said individual respondents formulated, directed and controlled the acts and practices of Kennedy and Cohen, Inc., including the acts and practices hereinafter set forth. The address of respondent Melvin S. Landow is 4340 North Bay Road, Miami Beach, Florida. The address of respondent Dean Willman is 7105 Miami Lakes Drive, West, Miami Lakes, Florida.

The aforementioned respondents cooperated and acted together in the carrying out of the acts and practices hereinafter set forth.

PAR. 2. Respondents have been engaged in the advertising, offering for sale, sale and distribution of household appliances and home entertainment products, including, but not limited to, televisions, stereo equipment, washers and dryers, refrigerators and air condi-

tioners, hereinafter referred to collectively as household appliances. Respondents operated and controlled one of the largest household appliance retailers in the United States, with sales from Kennedy and Cohen, Inc.'s retail outlets in 1974 approximating \$50 million.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused advertising layouts, sales memoranda, policy directives and other documents and communications to be transmitted by the United States mail to and from respondents' offices and said retail stores located in various States of the United States.

In the further course and conduct of their business, respondents sold and distributed household appliances in commerce by causing said appliances to be shipped from places of business of their 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 originated.

In the further course and conduct of their business, respondents caused advertisements for household appliances 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 were designed and intended to induce persons to purchase said household appliances.

Thus, respondents' volume of business was substantial and their acts and practices, as hereinafter set forth, were in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their household appliances, respondents made numerous statements and representations by means of television and radio broadcasts, by means of advertisements inserted in newspapers and by means of oral statements and representations of their salesmen and other agents and employees to prospective purchasers with respect to their products and services.

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

(1)

18" Diagonal COLOR TV PORTABLE
At Huge Warehouse Savings!
\$138

RCA 25" Diagonal COLOR TV CONSOLE
Has AccuColor for Sharp, Crisp Picture
in Life-Like Color

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Automatic Fine Tuning
100% Solid State
\$397

25" Diagonal COLOR TV CONSOLE
Contemporary Style
Black Matrix Picture Tube
Automatic Fine Tuning
Instant-On Picture
\$267

General Electric DRYER AND WASHER
\$248
When You Buy the Pair

LAUNDRY
Kennedy and Cohen carries top brands
like GENERAL ELECTRIC, WHIRLPOOL,
and others all at special savings with
a WHIRLPOOL ELECTRIC DRYER AND
AUTOMATIC WASHER priced as low as
\$94 each.
When You Buy the Pair.

GUARANTEED LOWEST PRICES IN THIS AREA
16 Cubic-Foot Refrigerator
\$197

(2)
14 HOUR SALE!
Saturday 10:00 A.M. to Midnight

(3)
GRAND OPENING
We're getting bigger to serve you better!
Our new Houston Warehouse Showroom
means even bigger purchasing power!
We're celebrating chain-wide with extra
markdowns on a huge variety of famous
brands of appliances and TV's. Come in
and save!

EMERGENCY SALE
Unavoidable construction delays at our new
Miami Complex have caused merchandise
that arrived too soon to pile up on our
loading docks! We're repricing a huge
variety of TV's, appliances and audio
components. Famous brands like RCA,
ZENITH, GE, WHIRLPOOL, FISHER save
you even more!

(4)

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HOLIDAY MARATHON

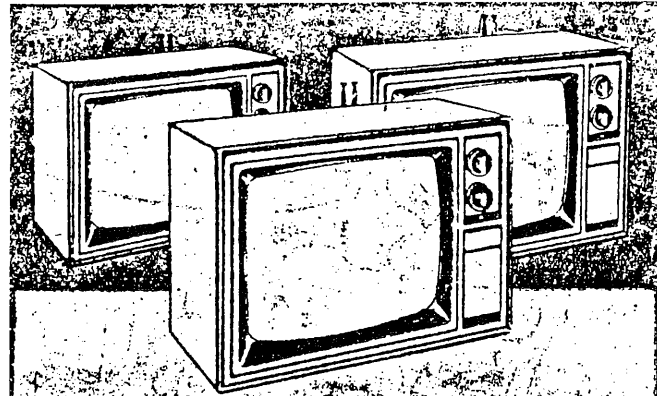
Special! Two Days Only. 12" Black and White Portable TV, \$9, When You Buy Any Color TV, Air Conditioner, Refrigerator, Range/Oven, Washer, Dryer or Audio System.

(5)

DIRECT TO CONSUMER

(6)

"JULY SALES JAMBOREE"



COLOR PORTABLES

Kennedy and Cohen carries Top Brands like GENERAL ELECTRIC, RCA, ZENITH and others all at special savings with a Kenco 18" diagonal COLOR TV PORTABLE priced as low as

\$169

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 respondents' salesmen to customers and prospective customers, respondents represented, directly or by implication, that:

1. Respondents were making a bona fide offer to sell the advertised household appliances at the price and on the terms and conditions stated in the advertisement.

2. Respondents had available sufficient quantities of the advertised appliances to meet reasonably anticipated demand.

3. By and through the use of their advertising illustrations, in connection with the special "sale" events, that:

- a. advertised household appliances could be purchased at reduced prices and purchasers were thereby afforded savings from respondents' regular selling prices;

- b. household appliances were available at these special selling prices for a limited period of time and would return to and, for a reasonable period of time, remain at some substantially higher amount after the expiration of the limited period.

4. By and through the use of the term "14 HOUR SALE!", as set out in Paragraph Four (2), and other terms of similar import and meaning not specifically set out herein, that the price at which such household appliances were being offered constituted a significant reduction from respondents' previously established regular selling price.

5. By and through the use of the terms "Grand Opening," "Emergency Sale," as set out in Paragraph Four (3), and other words of similar import and meaning not specifically set out herein, that respondents 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.

6. By and through the use of an advertisement such as set out in Paragraph Four (4), and others of similar import and meaning not specifically set out herein, that respondents offered a black and white portable television for the price of \$9 when the customer bought any color television, air conditioner or other similar household appliance.

7. By and through the use of the words "DIRECT TO CONSUMER," as set out in Paragraph Four (5), that respondents did not buy through normal distribution channels, that respondents operated as wholesale distributors and that respondents sold at less than retail prices.

8. By and through the use of advertising illustrations, as set out in Paragraph Four (6), and other advertisements of similar import and meaning not specifically set out herein, that respondents were

selling a variety of color portable televisions, including Zenith, RCA and GE, for the advertised price.

PAR. 6. In truth and in fact:

1. Most, if not all, of respondents' offers were not bona fide offers to sell said household appliances at the price and terms and conditions stated in the advertisement. To the contrary, some of said offers were made for the purpose of obtaining leads to persons interested in the type of household appliance so advertised. Members of the purchasing public who responded to said advertisements were shown other appliances, usually at a higher price and a higher margin of profit. Respondents' salesmen made little or no effort to sell the advertised appliances, and in some instances disparaged the advertised appliances in an attempt to sell other appliances with a higher margin of profit. Respondents used a method of compensating their salesmen designed to encourage sale of the higher profit margin items.

2. Respondents failed, in numerous instances, to have available sufficient quantities of the advertised product to meet reasonably anticipated demands.

3. Respondents' household appliances were not being offered for sale at "special" or reduced prices. To the contrary, in a substantial number of instances:

a. respondents' advertised selling prices and their regular selling prices were the same or substantially the same, and respondents used the aforementioned statements to mislead prospective customers into believing there is a savings, in a not insignificant amount, from respondents' regular selling price;

b. many of respondents' represented "special" 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 "special" prices. Thus, the period during which the "special" prices were available was not, in these instances, limited as stated in said advertisements.

4. Many of respondents' represented reduced prices were not reduced. Where respondents did reduce their regular selling prices, the amount of the reduction was, in many instances, insignificant.

5. Respondents did not reduce prices as a consequence of the special events. Rather, said sale events were used by respondents for

the purpose of creating in the purchasing public a false sense of urgency.

6. Respondents did not offer the black and white television for an actual price of \$9 in connection with another major purchase. Rather, respondents uniformly increased the prices of the appliances connected with the \$9 television offer, thereby misleading the purchasing public as to the true cost of the advertised television.

7. Respondents were not wholesale distributors and did not always sell at less than retail prices.

8. Respondents did not offer a variety of color portable televisions at the advertised price. Rather, a color portable television made especially for respondents is the only television which is offered at the advertised price, although the advertisement implied the consuming public may have purchased a "name brand" television at the stated price.

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

PAR. 7. In connection with respondents' sale of household appliances, respondents sold service contracts for continuing maintenance and repair of the purchased appliances. Respondents encouraged their salesmen to sell said contracts by methods of compensation, and respondents provided their salesmen with materials to assist in the sale of said service contracts.

In many instances, said sales materials contained false and misleading information such as, but not limited to, the following: (1) the frequency of repair statistics, (2) cost of repair statistics, (3) cost comparison with service contracts offered by other appliance dealers.

PAR. 8. The acts and practices of respondents as alleged in Paragraph Seven of using false and misleading information in the sale of service contracts, and using methods of compensation to encourage their salesmen to sell said service contracts, had the tendency and capacity to mislead the consuming public as to the advisability of purchasing such a service contract for their appliances.

Therefore, the acts and practices of respondents as set forth in Paragraph Seven were unfair, false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale and distribution of household appliances of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts, as aforesaid, has had 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 respondents' products and services at higher prices than said members of the purchasing public had intended to pay by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged were all to the prejudice and injury of the public and respondents' competitors and constituted 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Atlanta 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, as amended; 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in 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. Respondents Melvin S. Landow and Dean Willman were

officers and/or directors of Kennedy and Cohen, Inc., a corporation. They formulated, directed and controlled the policies, acts and practices of said corporation. The address of respondent Melvin S. Landow is 4340 North Bay Road, Miami Beach, Florida. The address of respondent Dean Willman is 7105 Miami Lakes Drive, West, Miami Lakes, Florida.

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 Melvin S. Landow and Dean Willman, individually, their 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 appliances, 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, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made in order to obtain leads or prospects for the sale of household appliances or any other product, merchandise or service.

2. Making representations, directly or by implication, orally or in writing, purporting to offer any product, merchandise or service for sale when the primary purpose of the representation is not to sell the offered product, merchandise or service but to obtain leads or prospects for the sale of another product, merchandise or service.

3. Representing, directly or by implication, orally or in writing, that any product, merchandise or service is offered for sale when such offer is not a bona fide offer to sell such product, merchandise or service according to the terms of the represented offer.

4. Disparaging in any manner, discouraging the purchase of, or refusing to sell and deliver, any product, merchandise or service which is advertised or offered for sale.

5. Failing to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless:

a. The advertisement clearly and adequately discloses the specific quantity of each item advertised that is available at each designated outlet; or

b. The advertisement clearly and adequately identifies those outlets at which merchandise is not immediately available.

6. Failing to maintain and produce for inspection and copying, on demand by the Federal Trade Commission or its representatives, adequate records which reveal for every advertisement disseminated in print or broadcast media, for a period of three (3) years from the date of its publication:

a. The volume of sales made of each advertised product, merchandise or service at the advertised price; and

b. The net profit from the sale of each advertised product, merchandise or service at the advertised price.

7. Using the word "Sale" or any other word or words of similar import or meaning not set forth specifically herein, unless:

a. 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 respondents for a reasonably substantial period of time in the recent regular course of their business;

b. Respondents clearly and adequately disclose the time period during which the advertised prices will be available; provided that, where the termination point of the "sale" has been advertised in good faith, respondents shall not be prohibited from extending the availability of the advertised prices, making further reductions, or reinstituting terminated price reductions;

c. Products, which are included in the advertisement but do not meet the requirements of 7(a), *supra*, are clearly and adequately identified as not having had a reduction in price.

8. Representing, directly or by implication, orally or in writing, that respondents have lowered prices as a result of some unusual circumstances, unless the circumstances are true and the prices are significantly lower than respondents' usual prices.

9. a. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price, unless such products, merchandise or services have been sold or offered for sale in good faith at the former price by respondents for a

reasonably substantial period of time in the recent regular course of their business.

b. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and some other reference price or identical products, merchandise or services in the trade area where such representation is made unless the nature of the reference price is explicitly identified and respondents have a reasonable basis to substantiate the reference price.

c. Representing, directly or by implication, orally or in writing, that by purchasing any of respondents' products, merchandise or services, customers are afforded savings amounting to the difference between respondents' stated price and a compared value price for comparable products, merchandise or services, unless substantial sales of products, merchandise or services of like grade and quality are being made in the trade area where such representation is made at the compared price or a higher price and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in said trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with products, merchandise or services of like grade and quality.

10. Failing to maintain and produce for inspection or copying on demand by the Federal Trade Commission or its representatives, for a period of one (1) year from the date of the representation, adequate records:

a. Which disclose the facts upon which any savings claims, sales claims or other similar representations as set forth in Paragraphs 7, 8 and 9 of this order are based; and

b. From which the validity of any savings claims, sales claims and similar representations can be determined.

11. Using any sales or advertising plan in which the purchase of an advertised "special" is dependent upon the purchase of another item, unless:

a. The terms and conditions of the offer are clearly and adequately disclosed in the advertisement; and

b. The recent regular selling price of the item which must be purchased is clearly and accurately disclosed in the advertisement (if advertised) and at the point of sale.

12. Misrepresenting, directly or by implication, orally or in writing, that respondents are wholesalers, sell at wholesale prices, or misrepresenting in any manner the nature, status, connections or scope of respondents' business.

13. Using or providing to salesmen or others materials containing false and misleading information, such as repair and cost comparison statistics, pertaining to the sale of service contracts for continuing maintenance and repair of purchased household appliances.

14. Failing to conspicuously post in the selling areas of each retail sales outlet the following notice:

NOTICE

THIS COMPANY'S POLICY IS TO SELL WHAT IT ADVERTISES. SHOULD YOU ENCOUNTER ANY DIFFICULTY IN PURCHASING AN ADVERTISED ITEM, CALL (place here the telephone number of the local manager or other appropriate and correct telephone numbers).

15. Failing to maintain and produce for inspection and copying on demand by the Federal Trade Commission or its representatives, for a period of one (1) year from the date of communication, adequate records to disclose facts pertaining to the receipt, handling and disposition of each communication from a customer, oral or written, concerning difficulty in purchasing an advertised item.

16. Failing to 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 appliances or utilized in the advertising, promotion or sale of household appliances and other merchandise.

It is further ordered, That the record keeping provisions of this order (Paragraphs 6, 10 and 16) do not pertain to any corporation or partnership not controlled, directly or indirectly, by any respondent.

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 offering for sale or the sale of any product, or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That each 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. In addition, for a period of ten years from

the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

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

GENESCO INCORPORATED

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9019. Complaint, March 11, 1975 — Decision, May 17, 1977*

This order, among other things, requires a Nashville, Tenn., operator of a retail clothing chain to cease writing off credit balances; failing to furnish statements advising customers of credit balances and their right to request and receive refunds. The order further requires the firm to refund monies due customers from January 1, 1972 to date and maintain prescribed information for a period of three years.

Appearances

For the Commission: *Alan D. Reffkin, Justin Dingfelder and John F. LeFevre.*

For the respondent: *Sanford M. Litvack, Kenneth E. Newman and Melanie S. Cutler, Donovan, Leisure, Newton & Irvine, New York City.*

COMPLAINT

[1] 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 Genesco Incorporated, a corporation, 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 Genesco Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at 111 7th Ave. North, Nashville, Tennessee. Respondent Genesco Incorporated formulates, controls and directs the policies, acts and practices, including those hereinafter set forth, of its retail apparel and footwear divisions, including its division, Bonwit Teller.

Bonwit Teller is a division of Genesco Incorporated. Its principal office and place of business is located at 56th St. and Fifth Ave., New York, New York.

PAR. 2. Respondent Genesco Incorporated, through its operating division, Bonwit Teller, operates a number of retail specialty clothing