

IN THE MATTER OF
FRANKART DISTRIBUTORS, INC., ET AL.

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

Docket C-2904. Complaint, Oct. 13, 1977 — Decision, Oct. 13, 1977

This consent order, among other things, requires a New Rochelle, N.Y. furniture dealer and its affiliates to cease using the terms "carved" or "detailed carving" or any other similar terms to describe furniture which has not been cut or carved into shape. Further, the order requires the firms to make clear and conspicuous disclosures regarding the composition or construction of their furniture, both in their advertising and on the furniture displayed in their showrooms.

Appearances

For the Commission: *Alan F. Rubinstein.*

For the respondents: *John A. Occhiogrosso, New Hyde Park, N.Y.*

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 Frankart Distributors, Inc., a corporation; Frankart Flushing, Inc., a corporation; Frankart-Fordham, Inc., a corporation; Frankart Westchester, Inc., a corporation; Frankart-New Rochelle, Inc., a corporation; Frankart Paramus, Inc., a corporation; Frankart Jamaica, Inc., a corporation; Frankart Kings, Inc., a corporation; Mallary, Inc., a corporation, doing business under that name and as Frankart-Grand Concourse, and Bernard Frankel, individually and as an officer 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. Respondent Frankart Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 543 Main St., New Rochelle, New York.

Respondent Frankart Flushing, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 37-11 Main St., Flushing, New York.

Respondent Frankart-Fordham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 18 West Fordham Road, Bronx, New York.

Respondent Frankart Westchester, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1088 Central Ave., Scarsdale, New York.

Respondent Frankart-New Rochelle, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 543 Main St., New Rochelle, New York.

Respondent Frankart Paramus, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Route 4, Spring Valley Road, Paramus, New Jersey.

Respondent Frankart Jamaica, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 160-08 Jamaica Ave., Jamaica, New York.

Respondent Frankart Kings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1209 Kings Highway, Brooklyn, New York.

Respondent Mallery, Inc., doing business under that name and as Frankart-Grand Concourse, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2431 Grand Concourse, Bronx, New York.

Respondent Bernard Frankel is an individual and an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His business address is 543 Main St., New Rochelle, New York.

PAR. 2. Respondent Frankart Distributors, Inc. is now, and for some time last past has been, engaged in the purchasing of furniture and related products for sale and distribution to the other corporate respondents named herein.

Respondents Frankart Flushing, Inc., Frankart-Fordham, Inc., Frankart Westchester, Inc., Frankart-New Rochelle, Inc., Frankart Paramus, Inc., Frankart Jamaica, Inc., Frankart Kings, Inc. and Mallery, Inc., doing business under that name and as Frankart-Grand Concourse are now, and for some time last past have been,

engaged in the advertising, offering for sale, sale and distribution of furniture and related products at retail to the public.

PAR. 3. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondent Frankart Distributors, Inc. has purchased, and continues to purchase, furniture and other merchandise from suppliers, distributors and manufacturers in states other than New York and New Jersey for the purpose of supplying said merchandise to the other corporate respondents named herein for sale at retail.

PAR. 4. In the further course and conduct of their business as aforesaid, respondents now cause and for some time last past have caused furniture and other merchandise when sold to be shipped from their places of business within the States of New York and New Jersey, to purchasers in states other than those in which said shipments originate.

PAR. 5. In the course and conduct of their business as aforesaid, respondents have caused, and now cause, the dissemination of advertisements regarding their furniture in newspapers of interstate circulation, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said merchandise.

PAR. 6. By virtue of the aforesaid acts and practices, respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their furniture, respondents have made and are now making, certain statements and representations in newspaper advertisements with respect to the method by which certain of their furniture has been styled.

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

. . . carved. . . . detailed carving.

PAR. 8. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set forth herein, respondents have represented and are now representing, directly or by implication, that said advertised furniture has been styled by cutting or carving.

PAR. 9. In truth and in fact: the furniture referred to in Paragraph Eight above is not styled by cutting or carving, but is formed from plastic by the use of a mold.

Therefore, the statements and representations set forth in Para-

graphs Seven and Eight hereof were and are false, misleading and deceptive.

PAR. 10. A substantial quantity of the furniture advertised, displayed, offered for sale, or sold by respondents has the appearance of being composed of solid wood, but in fact, contains exposed surfaces of veneered construction. The fact of such veneered construction is not disclosed in respondents' advertising, on the furniture itself, or on tags or labels attached thereto. Thus, respondents have failed to disclose a material fact, which, if known to certain customers would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale by respondents.

The aforesaid failure to disclose said material fact has the capacity and tendency to mislead purchasers or prospective purchasers with respect to the composition and construction of the furniture sold by respondents.

Therefore, respondents' failure to disclose said material fact was, and is, unfair, misleading and deceptive.

PAR. 11. A substantial quantity of the furniture advertised, displayed, offered for sale, or sold by respondents contains exposed surfaces composed of plastic or other materials which have the appearance of wood. No clear and conspicuous disclosures are made in respondents' advertising, on the furniture itself, or on tags or labels attached thereto, that the exposed surfaces of the furniture are composed of plastic or other materials which simulate wood, nor are disclosures made that such surfaces are not wood. Thus, respondents have failed to disclose material facts, which, if known to certain customers would likely affect their consideration of whether or not to respond to respondents' advertisements and to purchase merchandise being offered for sale by respondents.

The aforesaid failure to disclose said material facts, separately and in connection with the representations set forth in Paragraphs Seven and Eight hereof, has the capacity and tendency to mislead purchasers or prospective purchasers with respect to the durability, composition or construction of the furniture sold by respondents.

Therefore, respondents' failure to disclose said material facts was, and is, unfair, misleading and deceptive.

PAR. 12. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as sold by respondents.

PAR. 13. The use by respondents of the aforesaid false, misleading,

deceptive and unfair 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 products sold by respondents by reason of said erroneous and mistaken belief.

PAR. 14. 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 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 New York 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, now in further conformity with the procedure prescribed by Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Frankart Distributors, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 543 Main St., New Rochelle, New York.

Respondent Frankart Flushing, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 37-11 Main St., Flushing, New York.

Respondent Frankart-Fordham, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 18 West Fordham Road, Bronx, New York.

Respondent Frankart Westchester, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1088 Central Ave., Scarsdale, New York.

Respondent Frankart-New Rochelle, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 543 Main St., New Rochelle, New York.

Respondent Frankart Paramus, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Route 4, Spring Valley Road, Paramus, New Jersey.

Respondent Frankart Jamaica, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 160-08 Jamaica Ave., Jamaica, New York.

Respondent Frankart Kings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1209 Kings Highway, Brooklyn, New York.

Respondent Mallary, Inc., doing business under that name and as Frankart-Grand Concourse, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 2431 Grand Concourse, Bronx, New York.

Respondent Bernard Frankel is an individual and an officer of the corporate respondents. He formulates, directs and controls the policies, acts and practices of said corporate respondents, including the acts and practices hereinafter set forth. His business address is 543 Main St., New Rochelle, New York.

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 Frankart Distributors, Inc., Fran-

Frankart Flushing, Inc., Frankart-Fordham, Inc., Frankart Westchester, Inc., Frankart-New Rochelle, Inc., Frankart Paramus, Inc., Frankart Jamaica, Inc., Frankart Kings, Inc., corporations, Mallary, Inc., a corporation, doing business under that name and as Frankart-Grand Concourse, or under any other name or names, their successors and assigns, and their officers, and Bernard Frankel, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the advertising, displaying, offering for sale and distribution of furniture, or any other products, 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 terms "carved" or "detailed carving" or any other terms of similar import and meaning, to describe any furniture or part thereof that has not been cut or carved into shape.

FOR PURPOSES OF THIS ORDER, "EXPOSED SURFACES" ARE DEFINED AS THOSE PARTS AND SURFACES EXPOSED TO VIEW WHEN FURNITURE IS PLACED IN THE GENERALLY ACCEPTED POSITION FOR USE.

2. Failing to clearly and conspicuously disclose that furniture having the appearance of solid wood, but containing exposed surfaces of veneered construction, contains such veneered construction.

3. Failing to clearly and conspicuously disclose that furniture containing exposed surfaces composed in whole or in part of plastic or other materials which have the appearance of wood, contains such plastic or other materials, or that the exposed surfaces are not wood.

4. Failing to disclose either the true composition or construction of furniture or its parts, or that material is not what it appears to be, whenever any statement, representation or depiction is used in advertising, which may otherwise be misleading as to the true composition or construction of such furniture or its parts without such disclosure. Such disclosures shall be made clearly and conspicuously and in close conjunction with any statements, representations or depictions used.

5. Failing to clearly and conspicuously disclose, on the furniture itself, or on tags or labels attached to such furniture in a manner so as not to be easily removed, either the true composition or construction of furniture or its parts, or that material is not what it appears to be, whenever the appearance of such furniture or its parts may be misleading as to its true composition or construction without such disclosure.

It is further ordered, That respondents deliver a copy of this order

to all operating divisions and to all present and future personnel of respondents responsible for any aspect of preparation, creation, or placing of advertising, and to all present and future personnel of respondents responsible for the sale or offering for sale of all products covered by this order, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

It is further ordered, That respondents 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 promotional material utilized in the advertising, promotion or sale of all products covered by this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance obligations arising out of this order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of each change in business or employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations 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
JETMA TECHNICAL INSTITUTE, ET AL.

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

Docket 9061. Complaint, Oct. 28, 1975 — Decision, Oct. 19, 1977

This consent order, among other things, requires a San Francisco, Calif. seller of correspondence training courses for gas turbine engine mechanics, and technical illustrators, to cease misrepresenting the need, demand, or potential earnings of their graduates; failing to furnish prospective enrollees material disclosures regarding the employment rate, drop-out rate, and financial success of recent students. Further, respondents are required to furnish prospective students with a ten-day cooling-off period within which to cancel their contracts; to maintain for a two-year period files of inquiries and complaints relating to prohibited acts and practices; and to institute a surveillance program designed to ensure that their representatives comply with the terms of the order.

Appearances

For the Commission: *John M. Porter* and *Seela Lewis*, Consumer Protection Specialist.

For the respondents: *Daniel C. Smith, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

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 Jetma Technical Institute, a corporation, and Fred Lee, Jr. and Anna H. Lee, individually and as officers of said corporation, hereinafter sometimes referred to as "respondents," have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Jetma Technical Institute, hereinafter referred to as "Jetma," is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 103 South Airport Boulevard, South San Francisco, California.

Respondents Fred Lee, Jr. and Anna H. Lee are the principal officers of Jetma. They formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and