

IN THE MATTER OF

TAYLOR WOODCRAFT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3343. Complaint, Aug. 27, 1991—Decision, Aug. 27, 1991*

This consent order prohibits, among other things, a Malta, Ohio, furniture company from representing that any household furniture product is constructed of a solid wood, unless every exposed surface of the furniture is made of that solid wood.

Appearances

For the Commission: *David V. Plottner* and *Kelly Larrick-Serrat*.

For the respondent: *Robert J. Christie, Christie & Christie*,
McConnelsville, OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that Taylor Woodcraft, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is an Ohio corporation, with its office and principal place of business located in Malta, Ohio.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold and distributed furniture, including, but not necessarily limited to, household furniture.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated and caused the dissemination of promotional materials for its household furniture to consumers or to distributors for display or distribution to consumers.

PAR. 5. Respondent's promotional materials have included statements alluding to the wood content of such furniture. Typical, but not necessarily all-inclusive thereof, are the following:

A. "Solid maple night stand with two cedar-lined drawers."

B. "Today's version of the Armoire is sleek solid maple."

C. "Solid oak bunk beds, chest, mirror, night stand and student desk."

PAR. 6. By such statements, respondent has represented, directly or by implication, that all exposed surfaces of such furniture are constructed of solid maple or oak.

PAR. 7. In truth and in fact, such furniture contains veneered exposed surfaces. Therefore, the representations set forth in paragraph five, above, were and are false and misleading.

PAR. 8. The dissemination by respondent of the aforesaid false and misleading representations as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have disseminated said false and misleading representations, constitute unfair and deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Yao not participating.

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, its attorney, 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. Proposed respondent is a corporation 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 in Malta, 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

For purposes of this order, the following definition applies:

(A) “*Exposed surface*” means those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

I.

It is ordered, That respondent Taylor Woodcraft, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any household furniture in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that such furniture is constructed of a solid wood, unless every exposed surface of such product is made of that solid wood.

II.

It is further ordered, That respondent shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying, accurate records of all materials relied upon by respondent to substantiate any representation covered by this order.

III.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent, such as dissolution, assignment, or sales 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.

IV.

It is further ordered, That respondent shall:

A. Notify any purchaser, prior to delivering the purchaser's order for household furniture and excluding those purchasers to whom the respondent has distributed this order under B of this paragraph, that the furniture contains exposed veneered surfaces, if the respondent has made representations that the furniture is solid wood and the furniture, in fact, contains exposed veneered surfaces.

B. Distribute this order to the following:

1. Each of its operating division, officers and other personnel responsible for the preparation or review of promotional material;

2. Each distributor, retail outlet, and wholesale outlet that stock or has stocked Taylor Woodcraft's furniture and to which it has sold or delivered household furniture since January of 1987; and,

3. Each distributor, retail outlet and wholesale outlet to which Taylor Woodcraft has sold or delivered household furniture for which it received payment of \$2,000 or more in any year since January of 1987.

V.

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

Commissioner Yao not participating.

IN THE MATTER OF
NEW ENGLAND MOTOR RATE BUREAU, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9170. Final Order, Aug. 18, 1989—Modifying Order, Sept. 4, 1991

This order reopens the proceeding and modifies a 1989 final order that requires the respondent to halt its collective ratemaking activities in certain states. The Commission has determined to reopen the proceeding based on changed conditions of fact and to modify the order to permit the respondent to continue its collective ratemaking operations in New Hampshire.

ORDER REOPENING AND MODIFYING ORDER

On April 22, 1991, New England Motor Rate Bureau, Inc. ("NEMRB"), filed a Request to Reopen and Set Aside ("Request") the order in Docket 9170, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. The Request was on the public record for thirty days, and no comments were received.

NEMRB in its Request asserts that reopening is required by changed conditions of fact, because the state of New Hampshire now actively supervises collective ratemaking. The request to reopen the order is granted, and the order is modified to permit NEMRB to engage in collective ratemaking in New Hampshire, but the request to set aside the order is denied for the reasons stated below.

BACKGROUND

The 1983 complaint in this matter alleged that NEMRB violated Section 5 of the Federal Trade Commission Act by collectively formulating and filing in four states motor common carrier rates for the intrastate transportation of property. NEMRB asserted in defense, *inter alia*, that its collective ratemaking activities were protected from Section 5 by the state action doctrine.

Private conduct is protected from Section 5 as state action if the conduct is pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition with regulation and is "actively supervised" by the state. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97, 106 (1980);