

## Complaint

## IN THE MATTER OF

LEONARD MARGOLIS ET AL. TRADING AS  
SILVO HARDWARE COMPANY

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

*Docket 8561. Complaint, Mar. 14, 1963—Decision, Jan. 24, 1964*

Order requiring Philadelphia mail-order distributors of hardware, housewares, typewriters, toys, and other general merchandise, to cease representing falsely in catalogs distributed to prospective purchasers that higher prices quoted in juxtaposition with lower stated code prices were the usual retail prices in all the trade areas in which the catalogs were distributed; and by such statements in catalogs as "wholesalers and distributors," "BUY AT WHOLESALE PRICES," that they sold all their merchandise at wholesale prices.

## 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 Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, hereinafter referred to as the 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. Respondents Leonard Margolis and Norton Berger are individuals and copartners trading as Silvo Hardware Company, with their principal office and place of business located at 107-109 Walnut Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of hardware, housewares, typewriters, toys and other items of general merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business the respondents have distributed catalogs through the United States mail to prospective purchasers located outside the State of Pennsylvania. The following statements from the catalogs are typical but not all inclusive:

No. 18900 Perm-Grit Hand Sander—20001-S37 P83.....	\$1. 25
Skill Perma-Grit Hand Sander Sheets—18973-S37 P66.....	\$ . 99
No. 503 Skil ¼" Drill—503-S37 P1263-5 lbs.....	\$18. 95
No. 549 Skil ¼" Drill—549-S37 P1997-5 lbs.....	\$29. 95
No. H264 Stanley ⅜ H.P. Router—H264-S20 P4897.....	\$69. 95
No. H85 Stanley 8" Heavy Duty Builders' Saw—H85-S20 H6615-20 lbs.....	\$94. 50
No. 60½ Stanley Block Plane—60½-S19 P420.....	\$6. 25
No. X 226 Stanley "100 Plus" "Zig Zag" Extension Rule—X226-S19 P186.....	\$2. 80
No. 6800 Millers Falls Power Router—6800—M19 P3006.....	\$42. 95
Model K700-11 Shopmate Logger Chain Saw—Power Saw—K700-11- P4 H5332.....	\$79. 98
D-95 Disston Lightweight Straightback Hand Saw—D95-D6 P730....	\$10. 95
D-8 Disston Medium Weight Skew Back Hand Saw—D8-D6 P585..	\$8. 75
No. 602 Stanley Magnetic Upholsterer's Hammer—602-S19 P287.....	\$4. 10
No. 20 Stanley Try Squares—20-6-S19 P197.....	\$2. 82
Model 6T Smith-Corona "Galaxie" Portable Typewriter—6T-S12 H10498.....	\$141. 50
Model 5A Smith-Corona "Sterling" Portable Typewriter—5A-S12 H7795.....	\$104. 50
Model 4Y Smith-Corona "Skyriter" Portable Typewriter—4Y-S12 H6099.....	\$74. 50

Page 2 of the respondents' catalog contains the statement that, "all prices shown in the catalog are retail and your cost is shown in code."

The code used throughout the catalog is explained on page 2 of the catalog with the following example for a Stanley plane adapter kit:

H170-S20 P3098 5 lbs.....	\$44. 25
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"H170-S20" is described as the catalog number; "P", or some other letter, is the shipping key; "3098" is the purchaser's cost, the decimal point to be added by counting off two places from the right; "5 lbs." is the approximate weight of the item; and "\$44.25" is the "retail price established by manufacturer or recommended by us."

PAR 5. Through the use of the aforesaid statements the respondents have represented, directly or indirectly, that the higher stated

prices quoted in Paragraph 4 in juxtaposition with the lower stated code prices are the prices at which the merchandise described in Paragraph 4 is usually and customarily sold in all trade areas to which the catalogs are distributed and that a saving will be made of the difference between the two prices.

PAR. 6. In truth and in fact the higher amounts set out for the items listed in Paragraph 4 are not the prices at which said merchandise is usually and customarily sold in all trade areas to which the catalogs are distributed, but are in excess of the price or prices at which said merchandise is generally sold in some of said trade areas, and purchasers of respondents' merchandise in such trade areas would not realize a saving of the difference between the said higher and lower price amounts.

Therefore, the statements and representations as set forth in Paragraphs 4 and 5 hereof were and are false, misleading and deceptive.

PAR. 7. Through the use of such statements as, "wholesalers and distributors", "you will be able to BUY AT WHOLESALE PRICES", "you write the orders, mail them to us with proper remittance (according to your *wholesale cost*) \* \* \*" and "your confidential wholesale prices are printed in CODE" \* \* \* appearing in their catalogs the respondents have represented directly or indirectly that they sell all of their merchandise at wholesale prices.

PAR. 8. In truth and in fact the respondents do not sell, nor do they offer to sell, all of their merchandise at wholesale prices but, to the contrary, the prices of some of their merchandise are in excess of wholesale prices. Therefore, the statements and representations referred to in Paragraph 7 are false, misleading and deceptive.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations 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 into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 11. 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 commerce and unfair and deceptive

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acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Robert A. Mattina, Mr. Morton Nesmith*, supporting the complaint.

*Mr. Leonard Margolis, in personam*, and by acquiescence and partnership authorization for *Silvo Hardware Company* and *Mr. Norton Berger*, as an individual.

INITIAL DECISION BY HERMAN TOCKER, HEARING EXAMINER

AUGUST 15, 1963

In a complaint issued March 14, 1963, the respondents Leonard Margolis and Norton Berger, individually and as copartners trading as Silvo Hardware Company, were charged with having engaged in unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, all in violation of Section 5 of the Federal Trade Commission Act. The practices with which this complaint is concerned have to do with alleged representations to prospective customers that the goods or merchandise offered for sale by respondents were being sold at wholesale prices, lower than the retail prices usually and customarily paid for such goods or merchandise in the trade areas in which the customers solicited were located. These allegations resulted in two issues, (1) whether respondents' selling prices actually were *wholesale* prices and (2) whether the prices called "retail" by respondents actually were retail prices in the relevant areas of solicitation.

The respondents (hereafter described as Silvo) operate what has come to be known as a catalog house. Their place of business is 109 Walnut Street in Philadelphia, Pennsylvania. They distribute from 25,000 to 30,000 catalogs annually throughout the United States. In 1962, they did a gross business of approximately \$342,000. During the current year, their business is running about 10% below that (Tr. 32, 35-36). Although, as the printed reproduction of portions of the catalog will show, respondents purport to sell to dealers, actually this is not so. There is nothing in this material which suggests that there is any condition attached to buying other than a minimum order of \$10 and payment with the order. Respondents admit they sell to anybody who submits an order and pays for the goods (Tr. 192-193).

The following are extracts reproduced from Pages 2 and 3 of respondents' catalog (CX-4).\*

Significant portions of the foregoing extracts point up both the manner in which the respondents conduct their business and the

\* Pictorial extracts are omitted in printing.

practices with which this proceeding is concerned. The recipient of the catalog is referred to as a "dealer" and is welcomed to Silvo's "FAMILY OF DEALERS!". But, as mentioned before, one does not have to be a dealer to buy from Silvo or to buy at the prices at which it sells. This literature imposes no such condition and Margolis admitted as much in his testimony (Tr. p. 193). Respondents, in the material pictured, emphasize it by making clear that catalogs are free and that if the recipient or any of his "friends desire an extra copy of this catalog", all that is necessary to send a postcard to Silvo "and a copy will be sent free of charge". In this material, respondents tell their prospective customers that they are "able to BUY AT WHOLESALE PRICES" and that all that they have to do to buy and receive the merchandise is to "write the orders, mail them to (Silvo) with proper remittance (according to your *wholesale cost*)" and Silvo will "in turn \* \* \* ship (the) order promptly".

These blurbs at the left of the first of the reproduced extracts are implemented by the material at its right. This again emphasizes "Confidential Wholesale Prices". Although the "dealer" pretense is repeated by the remark that the catalog can be shown freely to "Customers", this whole dealer angle, in view of the manner in which respondents conduct their business, is primarily an appeal to the guile of prospective customers. Everybody likes to get a bargain, and, if one can be led to believe that he is getting something cheaper from Silvo than he would have to pay elsewhere, he is more likely to purchase from it. In this manner, whether or not there is a deception, trade is diverted from competitors. If there is a deception, there is a violation of the Act.

To lend enchantment to this catalog method of doing business, a ridiculously simple code is portrayed in the right-hand side portion of the first reproduced extract. Thus, in addition to the text material describing the commodity offered for sale, there are the two black-face (in the body of the catalog) groups of arabic numbers here, "3098" and "\$44.25". The \$44.25 is described by respondents as "Retail Price Estab. by Mfr. or Recommended By Us", and the "3098" code figure discloses the price which the solicited customer is expected to pay. He is told, "Your Cost Point Off Two Decimal Places From the Right". In other words, the sum and substance of the whole business is that respondents represent to prospective customers that they can buy, in this instance, a plane adapter kit for \$30.98 from them, whereas, if the kit were bought at retail, they would have to pay \$44.25. If this were so, customers would be saving \$13.27 by buying from Silvo. To repeat, it is charged that the represented retail price was fictitious in that this was not the

price at which the particular item involved usually was sold in the areas solicited and that the purported "wholesale" price in fact was not a wholesale price.

It is now established law "that the use of the term 'manufacturer's list price' represents to the public that that (is) the price at which the product (is) usually and customarily sold by other stores in the area". *Giant Food, Inc. v. Federal Trade Commission* 322 F. 2d 977, CA-DC, June 13, 1963 [7 S.&D. 710], and cases there cited.

Subject to the right of the respondents to disprove any fact of which official notice was taken, the hearing examiner issued, filed and there was served on respondents, a notice of intention to take official notice as follows:

1. "WHOLESALE" is a word generally used and understood to be used as an adjective to describe the business of a person or firm who, or which, normally sells to other persons or firms who are engaged in the business of buying such goods as are sold for purposes of resale, with the exception, however, that it is sometimes used to describe sales in quantity lots to industrial, commercial, institutional or professional users, although such users do not purchase for resale.
2. "WHOLESALE" is a noun generally used and understood to be used to describe the person or firm which engages in a wholesale business.
3. "RETAIL" is a word generally used and understood to be used as an adjective to describe the business of acquiring goods either by purchase, production or manufacture for the purpose of selling the same, generally, but not necessarily, in small quantities to the ultimate consumer or user thereof.
4. "RETAILER" is a noun generally used and understood to be used by a person or firm engaged in retail business.
5. The foregoing words, when used in any other grammatical form, such as verbs, participles, etc., retain the meanings above ascribed to them.
6. When any of the foregoing words are used in close context with words like "price", "cost", etc., they are understood to mean that the word "price" or "cost", or any such similar word, is the amount which governs or determines the money paid or to be paid in order to purchase or receive the article involved in the transaction or the amount usually demanded as a consideration for selling or delivering such article.
7. An offer for sale of a product to the consuming public which utilizes, in connection with the terms of the offer, an expression or word like or similar to the word "wholesale" is generally understood to mean that the price at which it is so represented is the same as the price regularly paid by retailers for such article; and, consequently, that if the purchaser buys the article at that price, he will save the difference between that price and the amount at which the article offered usually is sold at retail in the trade area, or areas, where the offer is made.
8. An offer for sale of a product to the consuming public which utilizes, in connection with the terms of the offer, an expression or word like or similar to the word "retail" is generally understood to mean that the price at which it is so represented is the same as the price regularly paid by purchasers of such articles at retail; and, consequently, that the difference between that price and any lower price at which the article is offered for sale is the amount that the purchaser will save if he makes the purchase from the

