

IN THE MATTER OF
TYSONS CORNER REGIONAL SHOPPING CENTER, ET
AL.

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

Docket 8886. Decision, June 10, 1975-Modifying Order, Oct. 21, 1975

Order modifying an earlier order dated June 10, 1975, 85 F.T.C. 987, 40 F.R. 36560, issued against a New York City department store chain by expanding the order with the addition of Paragraph III(C) to permit respondent to negotiate to include agreements in its shopping center leases which would provide that a W&J Sloane furniture specialty store shall be the only tenant in the center primarily engaged in the sale of furniture, home furnishings, and related accessories; and by modifying Paragraph IV(B) to allow respondent to limit distribution of copies of the order to those developers of shopping centers in which respondent is a tenant operating a store containing 50,000 square feet or more.

Appearances

For the Commission: *Anthony Low Joseph, David I. Wilson and Maynard F. Thomson.*

For the respondents: *Irving Scher, Weil, Gotshal & Manges, New York City for City Stores Company.*

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO
CEASE AND DESIST

By petition dated Oct. 2, 1975, City Stores Company has requested the Commission to modify its order of June 10, 1975, in two respects, described below. The Bureau of Competition has filed an answer objecting to the requested modification.

Respondent requests initially that a new subparagraph III(C) be added which would permit it to negotiate to include agreements in its shopping center leases which would provide that a W&J Sloane furniture specialty store shall be the only tenant in the center primarily engaged in the sale of furniture, home furnishings, and related accessories. (Such clauses would not prevent the competitive sale of these items by tenants such as department stores for whom such sale was not their principal activity.)

We agree with respondent's contention that the agreements it contemplates were not at issue in the litigated case, and under the circumstances the requested narrow modification is appropriate. It should be noted that this change is not intended to signify the Commission's approval of such agreements, but merely to exempt them

from coverage by the order in this matter; in view of the limited scope of the adjudicative proceedings. Given appropriate evidence of anticompetitive consequences the Commission will not hesitate to challenge shopping center lease agreements which provide for exclusive rights of occupancy, (e.g., *People's Drug Stores, Inc.*, File No. 721 0090, agreement containing order to cease and desist; placed on public record for comment, Oct. 5, 1975).

City Stores also requests that the order be modified to require that copies of the order be provided only to developers of shopping centers in which City Stores operates stores larger than 50,000 square feet. Respondent points out that it operates more than 100 stores of size below 50,000 square feet. We agree it is doubtful that the practices condemned by the order are likely to exist as to these stores, and notification of the centers in which they exist would, therefore, seem of slight possible value and might indeed produce confusion as well as modest but unnecessary expense. For the foregoing reasons we will make the second requested modification. This change will not, of course, obviate respondent's obligation to ensure that practices prohibited by the order are not committed in any shopping center in which it is a tenant. Therefore,

It is ordered, That the proceedings be reopened and that the order to cease and desist issued June 10, 1975, be modified by the addition of the following Paragraph III(C):

It is further ordered, That this order shall not prohibit respondent from negotiating to include, including, carrying out, or enforcing an agreement or provision in any agreement which provides that a W&J Sloane furniture specialty store operated by respondent in a shopping center shall be the only tenant in the shopping center primarily engaged in the sale of furniture, home furnishings, and related accessories.

It is further ordered, That Paragraph IV(B) of the order to cease and desist issued June 10, 1975, be modified to read:

Within thirty (30) days after this order becomes final, notify each developer of shopping centers in which respondent is a tenant operating a store containing 50,000 square feet or more of floor space of this order by providing each such developer with a copy thereof by registered certified mail.

IN THE MATTER OF
STEVENS BEDDING WAREHOUSE, INC., ET AL.

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

Docket C-2739. Complaint, Oct. 21, 1975—Decision, Oct. 21, 1975

Consent order requiring fourteen separately incorporated retail stores affiliated with as well as a Chicago, Ill., distributor of home furnishing products, among other things to cease misrepresenting savings available to customers; misrepresenting special or limited offers; misrepresenting merchandise as free; and failing to maintain adequate records.

Appearances

For the Commission: *Anne L. Draznin.*

For the respondents: *Merrill Freed, D'Ancona, Pflaum, Wyatt & Rikind, Chicago, Ill.*

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 Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., and Stevens Bolingbrook Bedding, Inc., corporations, and Norton Baran, as an officer and stockholder 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. Respondents Stevens Bedding Warehouse, Inc., Stevens Northern Bedding, Inc., Stevens Devon Bedding, Inc., Stevens Brookfield Bedding, Inc., Stevens Morton Grove Bedding, Inc., Stevens Harlem Bedding, Inc., Stevens Western Bedding, Inc., Stevens Wabash Bedding, Inc., Stevens Madison Bedding, Inc., Stevens Calumet City Bedding, Inc., Stevens Park Forest Bedding, Inc., Stevens Waukegan Bedding, Inc., Stevens Wheeling Bedding, Inc., Stevens Marquette Bedding, Inc., Stevens Bolingbrook Bedding, Inc., are corporations

organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their principal office and place of business located at 4435 S. Oakley Ave., in the City of Chicago, State of Illinois. Respondent Norton Baran is an officer and stockholder of said corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of home furnishing products, including, but not limited to bedding, sleeper sofas, and related case and upholstered furniture, to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have disseminated and now disseminate, and have caused and now cause the dissemination of advertisements by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements for said products by use of the United States mails, advertisements in newspapers of interstate circulation, advertisements in television and radio broadcasts of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said products in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

SUBSTANTIAL SAVINGS

* * * * *

TOTAL SELLOUT SAVE 28%-48% INCREDIBLE DISCOUNT PRICES

* * * * *

LAST 2 DAYS. END OF THE MONTH SALE. ANNUAL PRICE SHATTERING SALE YOU HAVE BEEN WAITING FOR. DRASTIC REDUCTIONS. TREMENDOUS REDUCTIONS.

* * * * *

NEVER BEFORE A SALE OF THIS TYPE ON NAME BRAND SLEEP PRODUCTS

* * * * *

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Complaint

MANUFACTURERS CLOSE OUT SALE OF THE YEAR. 4 DAYS ONLY.
THESE PRICES CANNOT BE REPEATED AFTER REMAINING
STOCKS ARE GONE

* * * * *

SUPER DISCOUNT WEEKEND SPECIAL. 3 DAYS ONLY

* * * * *

BRAND NAMES AT DISCOUNT PRICES AND YOU GET A BONUS

* * * * *

FREE 6 PIECE BEDDING PACKAGE WITH PURCHASE OF
ADVERTISED \$158 KING OR \$98 QUEEN SIZE BEDDING

* * * * *

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, with respect to and for the purpose of inducing the purchase of their merchandise, respondents and their salesmen, agents and representatives have represented and are now representing directly or by implication, that:

1. Respondents' products are being offered for sale at special or reduced prices, and that savings are thereby afforded to purchasers from respondents' regular selling price.
2. Respondents' advertised offer is made for a limited time only.
3. Purchasers of respondents' merchandise would realize at least a stated minimum amount of savings from respondents' regular selling prices.
4. Purchasers of respondents' products would receive free gifts or bonuses with the purchase of respondents' advertised products.

PAR. 6. In truth and in fact:

1. Respondents' products are not being offered for sale at special or reduced prices, and savings are not thereby afforded purchasers because of reductions from respondents' regular selling prices. The prices advertised by respondents are the usual and customary purchase prices of the products.
2. Respondents' advertised offers are not made for a limited time only. Said merchandise is advertised regularly at the represented prices and on the terms and conditions therein stated.
3. Purchasers of respondents' merchandise do not realize stated minimum amounts of savings over the price at which said merchandise has been sold at retail by the respondents in their recent, regular course of business. The stated percentage of savings constitutes an implied comparison between the manufacturers' suggested retail prices

for such merchandise and respondents' usual and customary selling prices.

4. Purchasers of respondents' products do not receive free gifts or bonuses with their purchases of advertised home furnishings and bedding products.

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

PAR. 7. The use by respondents of the false, misleading and deceptive statements, representations, acts and practices and their failure to disclose material facts as aforesaid, has had, and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete, and to induce a substantial number thereof to purchase said home furnishings and bedding products offered by respondents by reason of said erroneous and mistaken beliefs.

PAR. 8. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals in the sale and distribution of home furnishings, bedding products and service of the same general kind and nature as those sold by respondents.

PAR. 9. 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 and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 Chicago 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; 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,

