

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,

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 in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

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., and 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 executive offices and warehouse located at 4435 S. Oakley Ave., Chicago, Ill.

Respondent, Norton Baran, is an officer and stockholder of said corporations. He formulates, directs and controls the policies, acts and practices of said corporations, and his address is the same as that of said corporations.

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 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., their successors and assigns, and officers, and Norton Baran, as an officer and stockholder of said corporations and as an officer and stockholder of any other corporation which would stand in the same or a substantially similar relationship in operating, structure and business relationship to the

named corporate respondents and to him as the respondents do to each other at the date of service of this order and respondents' officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with advertising, offering for sale, sale or distribution of home furnishings and bedding products or any other products or merchandise advertised, sold or offered for sale or distribution in conjunction therewith 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 words "BUY NOW AND SAVE," "DRASTIC REDUCTIONS," "SUPER DISCOUNT WEEKEND SPECIAL," or any other words of similar import not specifically set forth herein, which represent, directly or indirectly, orally or in writing, that any savings are afforded the public in the purchase of merchandise from respondents at respondents' advertised price unless the price of such merchandise being sold or 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.

2. Representing, directly or indirectly, orally or in writing, that stated minimum amounts of savings are afforded the public in the purchase of merchandise from the respondents at respondents' advertised price, unless, in fact, the price at which merchandise is offered constitutes, at least, the stated minimum amount of reduction from the price at which said merchandise has been usually and customarily sold at retail by the respondents in the recent, regular course of business.

3. Using the words "LAST 2 DAYS," "4 DAYS ONLY," "WEEKEND SPECIAL" or any other words of similar import not specifically set forth herein, which represent that the products advertised are available to the public at the terms, conditions, and prices advertised for a limited time only, when in fact, said products have been offered for sale or sold by respondents at terms, conditions, and prices similar to those stated in the advertisements at times other than those set forth therein in the recent, regular course of respondents' business.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or service advertised, sold, offered for sale or distributed by respondents is furnished "free" or at no cost to the purchaser, when, in fact, the cost of such "free" merchandise or service is directly or indirectly included in the selling price of respondent's products that are

advertised, sold, offered for sale or distributed to the purchaser in conjunction with said "free" merchandise or service.

5. Representing, directly or indirectly, orally or in writing, that any merchandise or service is being offered as a "gift," "without charge," "bonus," or other words or terms which tend to convey the impression to the public that the merchandise or service is free, when the use of the term "free" in relation thereto is prohibited by the provisions of this order.

6. Failing to maintain and produce for inspection or copying for a period of three (3) years adequate records:

(a) Which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 1, 2 and 3 of this order are based, and

(b) From which the validity of any savings claims, including former pricing claims and comparative value claims, and similar representations of the type described in Paragraphs 4 and 5 of this order can be determined.

7. Failing to deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the sale or offering for sale of any product and engaged in any aspect of the preparation, creation or placing of advertising and failing to secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent corporations shall forthwith deliver a copy of this order to each of their operating divisions.

It is further ordered, That during the period from the date of service of this order to the expiration of 10 years from such date:

(a) respondents promptly notify the Commission within five (5) business days of the dissolution of a named corporate respondent which does not result in the emergence of a successor corporation or of the creation by incorporation, of a new retail outlet which would stand in the same or a substantially similar relationship in operation, structure and business relationship to the named corporate and individual respondents as the respondents do to each other at the date of service of this order, and

(b) respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, with the exception of those changes enumerated in (a) above, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporate respondents which may affect compliance obligations arising out of the 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

STEREO EQUIPMENT SALES, INC. T/A BALTIMORE
STEREO WHOLESALERS, ETC., ET AL.

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

Docket C-2740. Complaint, Oct. 21, 1975-Decision, Oct. 21, 1975

Consent order requiring a Timonium, Md., mail-order seller of stereo equipment and components, and related merchandise, among other things to cease soliciting prepaid orders if respondent cannot ship ordered merchandise within a stated time period; failing to make refunds; failing to maintain records; failing to disclose the shipping weight of merchandise; and misrepresenting any of their divisions as wholesalers.

Appearances

For the Commission: *Alan L. Cohen and Thomas J. Keary.*

For the respondents: *H. George Schweitzer, Heffelfinger, Schweitzer & Rabil, Wash., D.C.*

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, the Federal Trade Commission, having reason to believe that Stereo Equipment Sales, Inc., a corporation, doing business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters, and Benjamine Shumate, individually and as an officer 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 Stereo Equipment Sales, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 7A Aylesbury Rd., Timonium, Md. Such

corporation does business as Baltimore Stereo Wholesalers, Stereo Wholesalers and Stereo Discounters.

Respondent Benjamine Shumate is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of stereo equipment and components and other related merchandise to the public by mail order and through retail outlets.

PAR. 3. In the course and conduct of their business, respondents are causing, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business located in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, 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 aforesaid business, and at all times mentioned herein, respondents have been, and are now, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondents.

PAR. 5. In the course and conduct of their mail order business, as aforesaid, respondents offer merchandise for sale by means of advertisements, brochures, flyers, catalogs, letters, and oral representations by telephone. In connection with their aforesaid business and for the purpose of inducing the purchase of their said merchandise, respondents have made, and are now making, certain statements and representations with respect to delivery and the promptness with which orders will be filled.

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

UPON RECEIPT OF YOUR ORDER AT STEREO WHOLESALERS IT IS ASSIGNED AN ORDER NUMBER AND PROCESSED THROUGH OUR MAIL ORDER DEPARTMENT WHERE PRICING IS VERIFIED AND THE AVAILABILITY OF THE EQUIPMENT IS CHECKED. YOU ARE NOTIFIED AT THAT TIME AS TO THE SHIPPING STATUS OF YOUR ORDER. THE ORDER THEN GOES TO THE SHIPPING DEPT. WHERE IT IS NORMALLY SHIPPED WITHIN THREE WORKING DAYS.

IF YOUR REQUEST SHOULD NOT BE IN STOCK, NO SUBSTITUTIONS WILL BE MADE WITHOUT YOUR APPROVAL. WE WILL WRITE TO SEE IF YOU WISH A SUBSTITUTION OR A REFUND.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five hereof, and others of similar import and meaning but not expressly set forth herein, and by the offering of merchandise for sale, respondents have represented, and are now representing, directly or by implication, that:

1. merchandise ordered and prepaid will be delivered within a reasonable period of time after receipt of a purchaser's order; and
2. if the merchandise ordered by a purchaser is not in stock, the purchaser will be so notified and will be sent a notice asking whether the purchaser wants a substitution or a refund.

PAR. 7. In truth and in fact:

1. Respondents, in many instances, have not and are not now shipping merchandise within a reasonable period of time after receipt of a purchaser's prepaid order. Respondents, in many instances, ship merchandise many weeks after receipt of a purchaser's order.
2. When ordered merchandise is not in stock, respondents, in many instances, have not notified purchasers and offered such purchasers substitutions or refunds.

Therefore, the statements and representations set forth in Paragraphs Five and Six, hereof, were and are unfair, false, misleading, and deceptive.

PAR. 8. In the further course and conduct of their mail order business and for the purpose of inducing the purchase of their said merchandise, respondents have distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. The purchaser, if he wishes to completely prepay his order, is required to calculate the postage or shipping charges based on the weight of the merchandise offered, using the postage and shipping rate charts provided. However, the advertisements, brochures, flyers, catalogs, letters and other material soliciting orders do not indicate the weight of the merchandise offered.

Consequently, in many instances, purchasers have paid respondents more for postage or shipping than the actual postage or shipping charges incurred by respondents in mailing or shipping the merchandise, and said purchasers have not received from respondents a refund for their overpayments. Therefore, the failure of respondents to disclose the weights of their merchandise, and their failure to make refunds of postage or shipping overpayments, was and is unfair, misleading and deceptive.

PAR. 9. By and through the use of the trade name "Baltimore Stereo Wholesalers" and "Stereo Wholesalers" separately and in conjunction with statements appearing in their advertisements, brochures, flyers, catalogs, letters, or other material soliciting orders, respondents have

represented and do represent, directly or by implication, that they are wholesalers and that their prices are wholesale prices and that in each instance the savings afforded to their purchasers is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 10. In truth and in fact, respondents are not wholesalers with respect to many of the articles offered for sale and sold by them, nor do they offer to sell, or sell, many of their articles of merchandise at wholesale prices but, to the contrary, the prices of many of such articles are in excess of the prices usually and customarily paid by retailers. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

Therefore, the statements and representations set forth in Paragraph Nine, hereof, were and are false, misleading and deceptive.

PAR. 11. 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, 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 respondents' products, and overpayment of postage or shipping charges, by reason of said erroneous and mistaken belief.

PAR. 12. 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 Washington, D.C. 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

