

Complaint

IN THE MATTER OF

JOSEPH WINKLER & COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5645. Complaint, Mar. 11, 1949—Decision, Sept. 7, 1949

Where a corporation and two officers thereof, engaged in the interstate sale and distribution of general merchandise, especially hardware and household electrical appliances, fixtures, chinaware and related products, and in the conduct of a mail-order business in said commodities; in advertising their said products in circulars, catalogs, pamphlets, price lists, and newspapers and other periodicals, directly and by implication—

- (a) Represented falsely that said wares were immediately available in unlimited quantities, and that goods ordered would be shipped immediately; The facts being that in many instances there were long intervals between the receipt of the order and the shipment of the goods;
- (b) Represented falsely that said wares were of good quality and were usable for the purposes for which they were intended, and that (in the absence of a statement to the contrary), they were new;
- (c) Represented that prices quoted by them were wholesale prices when in fact they were identical with those which they quoted as retail; and
- (d) Represented that they would ship the commodities as described by them according to the orders received;

The facts being that in many instances they substituted inferior, or used articles, and articles not in usable condition;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true, and thereby into the purchase of substantial quantities of their products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Charles S. Cox for the Commission.

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 Joseph Winkler &

Co., a corporation, Jack Winkler and Jules Winkler, individually and as officers of Joseph Winkler & Co., 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. Joseph Winkler & Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 671 North Clark Street, Chicago, Ill. Respondents, Jack Winkler and Jules Winkler, are individuals and officers of the respondent Joseph Winkler & Co., a corporation, and formulate, dictate, direct, and control the policies, acts, and practices of said Joseph Winkler & Co., a corporation, particularly in respect to the acts and practices herein alleged; they also have their offices at 671 North Clark Street, Chicago, Ill.

PAR. 2. Respondents are now and for more than 5 years last past have been engaged in the sale and distribution of general merchandise and especially hardware and household electrical appliances, fixtures, chinaware, and related products, and conduct a mail-order business in said commodities at said location.

In the course and conduct of their business, the respondents have caused their said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business respondents have made false and deceptive statements and claims concerning their wares by means of circulars, catalogs, pamphlets, price lists, and advertisements in newspapers and other periodicals, including, but not limited to, an advertisement in Screenland magazine, issue of May 1946, a circular entitled "Winkler's Special Edition" and described as "Catalog 246," a circular entitled "Winkler's Special Edition" and described as "Catalog 147."

Among and typical of the statements and claims so made by respondents are the following:

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AVAILABLE FOR IMMEDIATE DELIVERY

(Drawing of a Radio) Radios—5 Tube
A. C. and D. C.
28.95 and 38.95

Automatic Electric
IRONS (Drawing of Electric Hand IRON)
6.95 and 8.95

PLAIN Electric Irons
4.95 and 5.90

(Drawing of Electric Curling Iron) Electric Curling Irons
2.49 and 2.95

Electric Toasters
4.45 and 7.95

Electric Cookers—2 burner (Picture of an Electric Toaster)
6.95 and 8.95

Enclose deposit with order—balance C. O. D.

Send 3¢ stamp for illustrated catalog listing over 600 hard-to-get items—Electric appliances. Cooking utensils, Hardware, etc.

Joseph Winkler & Co.
671 N. Clark St., Dept. C-4,
Chicago 10, Ill.

WINKLER'S SPECIAL EDITION

—Many Everyday Needs Now Available—

Catalog 246
Joseph Winkler
Retail only
671 North Clark Street, Chicago, Illinois.

WINKLER'S SPECIAL EDITION

Electrical Goods
Plumbing supplies
Hardware
Silverware
Chinaware
Cooking Utensils

And many other everyday needs at reduced prices.

Catalog 147
Joseph Winkler
Wholesale Distributors of General Merchandise
671 North Clark Street, Chicago, Illinois.

In the said circulars, catalogs, pamphlets, price lists and advertisements respondents have described the wares offered for sale, their kind and quality, and the terms and conditions upon which they can be obtained.

PAR. 4. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set forth herein, respondents have represented, directly and by implication that the said wares are immediately available in unlimited quantities; that goods ordered will be shipped immediately; that respondents' wares are of good quality and are usable for the purposes for which they are intended; that the goods are new in the absence of a statement to the contrary; that the prices quoted by respondents are wholesale prices, and that respondents will ship the commodities as described by respondents according to the orders received.

PAR. 5. In truth and in fact the said representations were false and deceptive. Respondents did not have the said goods available in unlimited quantities, or for immediate delivery. In many instances there were long intervals between the receipt of the order and the shipment of the goods ordered. Many of the articles described by respondents were not of good quality, many were not usable for the intended purposes, and some were not new, although this was not disclosed. In many instances respondents have not shipped the goods as described by them, and as ordered, but have substituted other, inferior, or used articles and articles not in usable condition. The prices quoted by respondents as wholesale prices were not wholesale prices but identical with prices which they quoted as retail prices.

PAR. 6. The aforesaid false and deceptive representations and claims of respondents in connection with the sale and offering for sale of their products in commerce have had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true and into the purchase of substantial quantities of respondents' products in commerce because of said erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 11, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Joseph Winkler & Co., a corporation, and Jack Winkler and Jules Winkler, individually and as officers of Joseph Winkler & Co., charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On June 13, 1949, the respondents filed their answer, in which answer they admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph Winkler & Co. is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 671 North Clark Street, Chicago, Ill. Respondents Jack Winkler and Jules Winkler are individuals and officers of the respondent Joseph Winkler & Co., a corporation, and formulate, dictate, direct, and control the policies, acts, and practices of said Joseph Winkler & Co., a corporation, particularly in respect to the acts and practices herein found; they also have their offices at 671 North Clark Street, Chicago, Ill.

PAR. 2. Respondents are now, and for more than 5 years last past have been, engaged in the sale and distribution of general merchandise and especially hardware and household electrical appliances, fixtures, chinaware, and related products, and conduct a mail-order business in said commodities at said location.

In the course and conduct of their business the respondents have caused their said products, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained, a course of

trade in said products in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of trade in such commerce has been substantial.

PAR. 3. In the course and conduct of their business respondents have made false and deceptive statements and claims concerning their wares by means of circulars, catalogs, pamphlets, price lists, and advertisements in newspapers and other periodicals, including but not limited to, an advertisement in "Screenland" magazine, issue of May 1946, a circular entitled "Winkler's Special Edition" and described as "Catalog 246," a circular entitled "Winkler's Special Edition" and described as "Catalog 147."

Among and typical of the statements and claims so made by respondents are the following:

AVAILABLE for IMMEDIATE DELIVERY

(Drawing of a Radio)	Radios—5 Tube A.C. and D.C. 28.95 and 38.95
Automatic Electric IRONS 6.95 and 8.95	(Drawing of Electric Hand IRON)
PLAIN Electric Irons 4.95 and 5.90	
(Drawing of Electric Curling Iron)	Electric Curling Irons 2.49 and 2.95
Electric Toasters 4.45 and 7.95	
Electric Cookers—2 burner 6.95 and 8.95	(Picture of an Electric Toaster)

Enclose deposit with order—balance C. O. D.

Send 3c stamp for illustrated catalog listing over 600 hard-to-get items—Electric appliances, Cooking utensils, Hardware, etc.

Joseph Winkler & Co.
671 N. Clark St., Dept. C-4,
Chicago 10, Ill.

WINKLER'S SPECIAL EDITION

—Many Everyday Needs Now Available—

Catalog 246

Joseph Winkler

Retail only

671 North Clark Street, Chicago, Illinois

WINKLER'S SPECIAL EDITION

Electrical Goods
Plumbing Supplies
Hardware
Silverware
Chinaware
Cooking Utensils

And many other everyday needs at reduced prices.

Catalog 147

Joseph Winkler

Wholesale Distributors of General Merchandise

671 North Clark Street, Chicago, Illinois.

In the said circulars, catalogs, pamphlets, price lists, and advertisements respondents have described the wares offered for sale, their kind and quality, and the terms and conditions upon which they can be obtained.

PAR. 4. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set forth herein, respondents represented, directly and by implication, that the said wares were immediately available in unlimited quantities; that goods ordered would be shipped immediately; that respondents' wares were of good quality and were usable for the purposes for which they were intended; that the goods were new in the absence of a statement to the contrary; that the prices quoted by respondents were wholesale prices, and that respondents would ship the commodities as described by respondent according to the orders received.

PAR. 5. In truth and in fact the said representations were false and deceptive. Respondents did not have the said goods available in unlimited quantities, or for immediate delivery. In many instances there were long intervals between the receipt of the order and the shipment of the goods ordered. Many of the articles described by respondents were not of good quality, many were not usable for the intended purposes, and some were not new, although this was not disclosed. In many instances respondents did not ship the goods as described by them, and as ordered, but substituted other, inferior, or used articles and articles not in usable condition. The prices quoted by respondents as wholesale prices were not wholesale prices but identical with prices which they quoted as retail prices.

PAR. 6. The use by respondents of the aforesaid false and deceptive representations and claims in connection with the sale and offering for sale of their products in commerce had the tendency and capacity

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to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true and into the purchase of substantial quantities of respondents' products in commerce because of said erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Commissioner Davis absent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondents thereto, in which answer said respondents admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Joseph Winkler & Co., a corporation, and its officers, and the respondents Jack Winkler and Jules Winkler, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of hardware and household electrical appliances, fixtures, chinaware, or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(1) That wares not available are in fact available for immediate delivery;

(2) That wares are of good quality, or that they are usable for the purposes for which such wares are customarily used, when such is not a fact;

(3) That used or second-hand articles are new by failing to disclose that they are used or second-hand;

(4) That the established or regular retail prices at which wares are sold or offered for sale are wholesale prices.

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It is further ordered, That the respondents 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.

Commissioner Davis absent.