

distress merchandise of a supplier or that fur products are are offered for sale at a savings as a result of unusual circumstances.

8. Represents in any manner, contrary to fact, that special price concessions have been obtained from suppliers with respect to any fur products offered for sale.

9. Represents in any manner, contrary to fact, that the furs contained in fur products offered for sale were obtained directly from a supplier of fur pelts or at an auction of fur pelts.

10. Represents in any manner, contrary to fact, that middleman costs have been eliminated with respect to any fur products offered for sale.

11. Misrepresents in any manner the savings available to purchasers of respondents' fur products.

12. Falsely or deceptively represents in any manner that prices of respondents' fur products are reduced.

C. Making claims and representations of the types covered by subsections (a), (b), (c) and (d) of Rule 44 of the Rules and Regulations promulgated under the Fur Products Labeling Act unless there are maintained by respondents full and adequate records disclosing the facts upon which such claims and representations are based.

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

JOHN SURREY, LTD., ET AL.

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

Docket 8605. Complaint, Nov. 8, 1963—Decision, Mar. 16, 1965

Order requiring a direct mail order catalog distributor of New York City engaged in selling articles of general merchandise—such as pens, radios, typewriters, tools, and drill bits—to cease making false and deceptive pricing, savings, and quality claims in advertising its merchandise by using the word "Reg.," or similar words, in comparative pricing claims to refer to prices which were higher than its regular selling price of such merchandise, using the words "manufacturer's list price," or similar words

Complaint

67 F.T.C.

to refer to retail prices which were appreciably higher than prevailing retail prices of such merchandise in respondents' trade area, and falsely representing that its drill bits were precision ground and of high speed quality.

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 John Surrey, Ltd., a corporation, and Joseph Ross, individually and as an officer of said corporation, 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. Respondent John Surrey, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 11 West 32nd Street, in the city of New York, State of New York.

Respondent Joseph Ross is 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 various articles of merchandise, including such items as visual control boards, typewriters, pens, electric can openers, radios, checkwriters, electra maids, tools, drill bits, and other articles of general merchandise to the consuming public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of New York 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 products in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said products, the respondents have caused catalogs to be published and distributed by the United States mails to prospective purchasers of

299

Complaint

their said products. Said catalogs describe the numerous articles of merchandise offered for sale by respondents, and in connection therewith set forth various price amounts in connection with said articles of merchandise.

Among and typical and illustrative, but not all inclusive, of such statements appearing in respondents' catalogs and other advertisements are the following:

VISUAL CONTROL BOARD * * * for HALF the USUAL PRICE!

The cost of this revolutionary New VISUAL CONTROL BOARD is not the \$49.95-\$59.95 or even \$69.95 the other boards sell for today, but only \$29.95 * * * .

* * * * *
 Consul Lightweight Portable Typewriter, Mfrs. Suggested List Price \$79.95 plus Fed. Tax. OUR CLEARANCE SALE PRICE \$39.95, plus Fed. Tax.

* * * * *
 AMAZING PEN OFFER \$1.69 Value—NOW 4 for \$1.00 * * * .

* * * * *
 Checkwriters like this cost as much as \$150.00—each-----\$18.75.

* * * * *
 Power Packed Transistor Radio, The Tiny Radio with the Titanic Tone * * * Complete Value \$49.95—\$24.95.

* * * * *
 Electric Can Opener . . . at an amazing low price—Advertised in Life—\$19.95 * * * . Our Sale Price \$9.95.

* * * * *
 CHROME VANADIUM STEEL SPEED DRILL BITS 29 PC SET IN METAL STAND Reg. \$42.50—NOW \$6.75 * * * . (Said price of \$42.50 also appears on the carton in which said bits are sold.)

* * * * *
 NEW TROY ELECTRA-MAID Reg. \$29.95—Sale Price \$19.95.

PAR. 5. By and through the use of the above quoted statements, and others of similar import not specifically set out herein, the respondents represent that the higher stated prices set out in said advertisements in connection with the terms "Half the Usual Price" for Visual Control Boards and "Reg." for drill bits and electra maids were the prices at which the advertised merchandise had been usually and customarily sold by respondents at retail in the recent regular course of their business and that the differences between the said higher price amounts and the corresponding lower prices represented savings to purchasers from respondents' usual and customary retail price.

PAR. 6. In truth and in fact, the higher prices set out in said advertisements in connection with the terms hereinabove quoted in Paragraph Five were in excess of the prices at which the advertised merchandise had been usually and customarily sold by respondents in the recent regular course of business and the differences between said higher and lower prices did not represent savings to purchasers from respondents' usual and customary retail prices.

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

PAR. 7. Through the use of the above-quoted higher price amounts in connection with the following words and terms, and others not expressly set out herein, "Value" for pens and radios, "Mfrs. Suggested List Price" for typewriters, "like this cost as much as" for checkwriters and "advertised in Life" for can openers, respondents represent that said amounts were the prices at which the merchandise referred to was usually and customarily sold at retail in the trade area or areas where the representations were made, and through the use of said higher price amounts and the corresponding lesser amounts that the difference between said amounts represented a saving to the purchaser from the price at which said merchandise was usually and customarily sold in said trade area or areas.

PAR. 8. In truth and in fact, said higher price amounts set out in connection with the words and terms "Value" for pens and radios, "Mfrs. Suggested List Price" for typewriters, "like this cost as much as" for checkwriters and "advertised in Life" for can openers were not the prices at which the merchandise referred to was usually and customarily sold at retail in the trade area or areas where the representations were made, but were in excess of the price or prices at which the merchandise was generally sold in said trade area or areas, and purchasers of respondents' merchandise would not realize a saving equal in amount to the difference between the said higher and lower price amounts.

Therefore, the above referenced statements and representations as set forth in Paragraphs Four and Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the further course and conduct of their afore-stated business and for the purpose of inducing the sale of their drill bits, respondents have made certain statements and representations with respect to the quality of their drill bits in catalogs and newspaper advertisements and on the carton in which the drill bits are packaged, of which the following are illustrative and typical:

Super Speed Drills Precision Ground—29 Tested Drills with Special Gun-Metal Finish * * * No. 1229. All 29 Drills of Alloy Chrome Vanadium Steel Sand-blasted Degreased—Precision Ground for Chip Clearance—Polished Standard Jobber lengths—Fully Guaranteed.

PAR. 10. Each set of drill bits is composed of a number of individual items which are contained in a box. The country of origin is set forth in small and inconspicuous lettering on the box, the drill bits and on the bottom of the stand and sizer. Purchasers of said drill bits who fail to see the said inconspicuous lettering on the box can determine the country of origin only by opening the box and carefully examining the minute lettering on each drill or turning the metal stand upside down. Said disclosure is, therefore, inadequate to apprise prospective purchasers of the country of origin of said drill bits.

PAR. 11. In the absence of an adequate disclosure that a product, including speed drill bits, is of foreign origin, the public believes and understands that it is of domestic origin, a fact of which the Commission takes official notice.

As to the aforesaid articles of merchandise, a substantial portion of the purchasing public has a preference for said articles which are of domestic origin, of which fact the Commission also takes official notice. Respondents' failure clearly and conspicuously to disclose the country of origin of said articles of merchandise is, therefore, to the prejudice of the purchasing public.

PAR. 12. Through the use of aforesaid statements and representations, and other similar thereto, but not specifically set out herein, the respondents represent, and have represented, that:

1. Their drill bits are super speed or high speed drill bits.
2. Said drill bits are made of an alloy of chrome vanadium steel.
3. Said drill bits are "fully guaranteed."

PAR. 13. In truth and in fact:

1. Respondents' drill bits are not super speed or high speed drill bits.
2. Said drill bits are not made of an alloy of chrome vanadium steel.
3. The advertised guarantee for said drill bits fails to set forth the nature and extent of the guarantee, the manner in which the guarantor will perform thereunder and the identity of the guarantor.

Therefore, the above referenced statements and representations as set forth in Paragraphs Four and Nine are false, misleading and deceptive.

Initial Decision

67 F.T.C.

PAR. 14. In the further 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 and distribution of visual control boards, typewriters, radios, electric can openers, electra maids, speed drill bits and articles of general merchandise of the same general kind and nature as those sold by respondents.

PAR. 15. The use by the 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' products by reason of said erroneous and mistaken belief.

PAR. 16. 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 acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. William B. James and *Mr. Anthony J. Kennedy* supporting complaint.

Mr. Leonard Belford, New York, N.Y., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER
SEPTEMBER 2, 1964

This proceeding, brought against a direct mail order catalogue distributor and its president, by complaint issued November 8, 1963, charges respondents with unfair methods of competition and unfair and deceptive acts and practices, in violation of Section 5 of the Federal Trade Commission Act.

The Pleadings

The complaint, in addition to jurisdictional allegations, quotes certain advertisements issued by respondents and makes three different types of allegations:

1. As to some advertising, the complaint charged that the advertisements represent that respondents had previously sold the merchandise at a higher price than that contained in the advertising because of the use of "regular" or "usual" in describing the higher price.

2. As to other advertising, the complaint charged that the advertisements represent that the price in the trade area is higher than that contained in the advertising because of the use of "value" and "manufacturer's suggested list price."

3. As to still other advertising, the complaint charged that the advertising and the carton in which certain drill bits were packed, a) failed to disclose foreign origin; b) falsely represented the quality of the product; and c) "guaranteed" the product without setting forth the manner in which the guarantor would perform.

By answer filed December 12, 1963, respondents denied that the principal office of John Surrey, Ltd., was located where charged and that Joseph Ross was legally responsible for its acts and practices. Respondent Ross denied all of the other allegations of the complaint except paragraphs 10 and 16. Paragraph 10 states that drill bits are contained in the box (previously described), that the country of origin is in inconspicuous letters on the box, and purchasers cannot determine the country of origin except by opening the box and carefully examining the minute lettering on each drill and that said disclosure is inadequate to apprise prospective purchasers of the country of origin of said drill bits. Paragraph 16 charges that the acts and practices of respondents constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Respondent Surrey denies that there is a substantial course of trade in the products and that the acts are being done presently. It also denies the allegation interpreting the advertising as representing the price at which goods were customarily sold in the trade area, and refers to the specific advertisements for a full statement of their contents. It denies specifically the other charging paragraphs including paragraphs 10 and 16 admitted by respondent Ross through his failure to deny them. The answers taken together thus constitute a general denial of the allegations of the complaint.

In addition to the general denial, four affirmative defenses are alleged: 1) the matters referred to in the complaint do not pertain to acts or practices of respondent Ross in commerce and are insufficient in law; 2) the activity has ceased, has no substantial effect on commerce, and the proceeding is not in the public interest; 3) the acts were "puffing" and not misleading, false or deceptive; 4) the proceeding is unfair because respondents cooperated in an investigation and readily consented and adhered to a course of business which would involve no further question of violations.

