

IN THE MATTER OF

CONSUMERS HOME EQUIPMENT COMPANY, AND AVERY
B. CHERETON, HARRY H. CHERETON, H. H. GORDON,
AND E. MALLISON, AND MRS. HANNAH CHERETON, IN-
DIVIDUALLY AND AS A DIRECTOR OF CONSUMERS
HOME EQUIPMENT COMPANY

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

Docket 5174. Complaint, June 3, 1944—Decision, May 10, 1946

In a proceeding involving the alleged use of unlawful practices, in which the supporting evidence for the most part had to do with intrastate sales in the Detroit area by the concern's Detroit office; in which very little direct evidence was elicited from its various officers bearing on its over-all plan of operations, with its branch offices in several States; but in which there was evidence of several interstate transactions consisting of sales made out of its Detroit office to purchasers in Toledo, Ohio, sustaining some of the charges of misrepresentation sustained in the complaint; findings and order to cease and desist were limited to those practices which the evidence showed were performed in interstate as well as in intrastate commerce, since such evidence of the intrastate practices is competent to indicate the concern's general method of doing business, it should not, uncorroborated by evidence of use of similar practices in interstate commerce, supply the sole basis for a finding and order; it being noted that should later developments indicate that respondents are continuing to engage generally in those acts and practices which the evidence was limited to showing had been followed in the Detroit area, further proceedings in the public interest may be instituted.

Where a corporation, with 14 branch offices in 7 States; and 4 officers and directors thereof, who controlled and managed its affairs; engaged in interstate sale and distribution of silverware, mattresses, blankets, radios, towels, and other merchandise direct to the purchasing public, usually upon an installment basis, by and through house-to-house canvassers or agents, making use of a sales plan consisting of false representations and fraudulent schemes—

- (a) Exhibited to prospective purchasers samples of merchandise of a kind and quality different from that which they actually delivered; for example, representing that they were engaged in the sale and distribution of "International Silver" or "Community Silver," and making use of a set of the former as a sample; when in fact the silver actually delivered to the purchasers was "National Silver";
- (b) Represented falsely that their merchandise was limited in quantity or was being offered at a special sales price;
- (c) Represented that said merchandise was offered by them at a saving from prices charged by local retail stores; when in fact their prices were comparable to or higher than the usual and customary retail prices; and
- (d) Attempted to force the purchaser to accept and pay for the merchandise delivered, when the latter objected to it or notified them that it was not of

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the kind or quality ordered; and did not make an immediate adjustment of said controversy;

With the result that they thereby fraudulently induced a substantial portion of the purchasing public to place orders with them for merchandise of a kind and quality different from that which they actually delivered or the purchaser expected to receive; and failed to make delivery in accordance with the contract or the sample submitted at time of purchase;

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. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. Joseph Callaway for the Commission.

Semmes, Goodrich & McEvoy, of Detroit, Mich., for respondents.

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 Consumers Home Equipment Co., a corporation, Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison, individually and as officers and directors of Consumers Home Equipment Co., and Mrs. Hannah Chereton, individually and as a director of Consumers Home Equipment Co., 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. The respondent Consumers Home Equipment Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, and has its principal office and place of business at 4805 Woodward Avenue, Detroit, Mich. Said respondent also operates branch offices in various other States of the United States.

PAR. 2. The individual respondents, Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison, are officers and directors of the respondent Consumers Home Equipment Co. and Mrs. Hannah Chereton is a director of said company, and, as such, formulate, direct, and control the policies, practices, and acts hereinafter described and referred to. Their address is 4805 Woodward Avenue, Detroit, Mich.

PAR. 3. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of silverware, mattresses, blankets, radios, towels, and various other household articles.

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Respondents' said articles, when sold, are shipped by respondents from their aforesaid place of business in Detroit, Mich., or from the plants where said articles are manufactured, to purchasers thereof located in various States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein 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.

PAR. 4. Respondents employ salesmen or house-to-house canvassers to sell their said products. Respondents supply said salesmen with samples of their said products and customarily give them some instruction in the art of salesmanship. The salesmen then call at homes and offer respondents' products for sale. In some instances the salesmen carry products with them and make outright sales while in the home of the purchaser. The usual method of selling respondents' products, however, is to show the prospective purchaser a sample of the product and obtain from the prospect a purchase contract and a deposit or down payment on the article sold, if possible. Said contract is then submitted to the branch or home office. If the contract is approved, the merchandise is then delivered to the purchaser and the next payment or first installment is collected. Collectors thereafter call upon the purchasers periodically until the full purchase price of the merchandise is collected.

PAR. 5. In the course and conduct of their business as aforesaid, the respondents directly or through their said salesmen have made many oral statements and representations in connection with the sale of their products. Among and typical of said statements and representations are the following:

(1) That they were selling Rogers 1847 silverware at a price substantially less than the usual price at which said silverware customarily sold at retail.

(2) That respondents were putting on a special advertising campaign in an effort to acquaint the public with respondents' merchandise, and during such campaign said merchandise was sold at reduced prices or at prices substantially less than the regular or usual prices at which said articles were customarily sold.

(3) That they were selling articles of merchandise at prices which were less than the usual prices at which articles of equivalent value were customarily and regularly sold by others.

(4) That respondents were representatives of local and well-known business houses.

(5) That the silverware sold by them was carried in stock by respondents and by all large department stores, and that the patterns sold by respondents could be supplemented.

(6) That their silverware was superior in quality to the silverware offered by local stores at comparable prices.

(7) That respondents were offering for sale and selling well-known and nationally advertised products.

(8) That additional merchandise was given free with the purchase of a set of respondents' silverware.

(9) That only a limited number of sets of silverware would be sold in a given locality.

(10) That certain silverware advertised in The Saturday Evening Post and over the radio was respondents' silverware.

PAR. 6. The representations set forth and referred to above and others of similar import and effect but not specifically set out herein were false and misleading. In truth and in fact, the silverware which respondents represented as being Rogers 1847 silverware at a reduced price was not Rogers 1847 silverware but was an inferior grade of silverware which respondents regularly sold at a price which was substantially less than the regular and customary retail price of Rogers 1847 silverware. The respondents were not putting on any special advertising campaign to acquaint the public with their merchandise but the articles of merchandise which respondents claimed they were selling at reduced prices were regularly and customarily offered for sale and sold by respondents at the prices asked. The prices respondents charged for their merchandise were not less than the prices charged by others for articles of equivalent value. In fact, respondents' prices were higher generally than were the prices charged by local stores for merchandise of equivalent value. Respondents did not represent local stores or other concerns. The patterns of silverware offered for sale and sold by respondents were not carried in stock by respondents or local department stores, as a rule. In fact, most of respondents' silverware was of obsolete patterns. Respondents' silverware was inferior to silverware offered by local stores at comparable prices. Respondents' products are not well-known or nationally advertised products. Free goods were not given purchasers of respondents' sets of silverware but the purchase price of said sets of silverware includes the purchase price of the so-called free goods also. Respondents do not limit the number of sets of silverware that

are sold in a given community but attempt to sell as many sets as possible. Respondents' said silverware is not advertised in the Saturday Evening Post or over the radio.

PAR. 7. Among the further unfair and deceptive acts and practices engaged in by respondents are the following:

(1) Refused to return payments or deposits made by purchasers on merchandise which was unsatisfactory or not as represented by respondents' salesmen, after having agreed to do so.

(2) Refused to return payment or deposits made by purchasers on merchandise in cases where respondents did not desire to complete the sale.

(3) Delivered to purchasers goods other than and in some instances inferior in quality to the goods ordered by the purchaser thereof.

(4) Delivered goods in addition to those ordered by purchasers and then threatened to sue said purchasers if the unordered merchandise was not paid for.

(5) Failed to deliver the number of articles of merchandise promised on a given order.

(6) Delivered defective merchandise when merchandise in first class condition and free from defects had been ordered.

(7) Failed to repair or replace unsatisfactory or defective merchandise.

(8) Failed to return defective merchandise which had been taken up for repair.

PAR. 8. The use by respondents of the false and misleading representations set forth and referred to above and other representations of similar import and effect but not specifically set out herein has had the tendency and capacity to mislead and deceive and has misled and deceived a substantial portion of the purchasing public and, as a result of the deception engendered by said false and misleading representations, substantial quantities of respondent's said products have been purchased by said public.

PAR. 9. The aforesaid acts and practices of 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 June 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondents,

Consumers Home Equipment Co., a corporation, and Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison, individually and as officers and directors of Consumers Home Equipment Co., and Mrs. Hannah Chereton, individually and as a director of Consumers Home Equipment Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondents thereto, testimony and other evidence in support of, and in opposition to, the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto (oral argument not having been requested); 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. The respondent Consumers Home Equipment Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its principal office and place of business at 4805 Woodward Avenue, Detroit, Mich. The individual respondents Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison are officers and directors of the respondent Consumers Home Equipment Co. and, as such, formulate, direct, and control the policies, practices, and acts hereinafter described. The address of said individual respondents is 4805 Woodward Avenue, Detroit, Mich. The respondent Mrs. Hannah Chereton is a director of said corporate respondent but is not actively engaged in the conduct of said business.

PAR. 2. For several years last past the corporate respondent, Consumers Home Equipment Co., and the individual respondents Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison have been engaged in the sale and distribution of silverware, mattresses, blankets, radios, towels, and other articles of merchandise direct to the purchasing public, usually upon an installment basis, by and

through house-to-house canvassers or agents. Respondents cause said merchandise, when sold, to be transported from their place of business in the State of Michigan or from the place of business of their various branch offices to purchasers thereof located in States other than the State of Michigan or the States in which such branch offices are located.

The respondents have established and operate 14 branch offices in 7 States of the United States. Each branch office is under the control of a branch manager who is employed by the respondents upon a salary basis. Such branch managers from time to time requisition merchandise from the respondents at Detroit, Mich. Such requisitions of merchandise are based either upon requirements to fill orders or upon estimates of sales. The respondents purchase all merchandise sold by the branch offices and fill the requisitions of the branch managers from the stock of merchandise held by the respondents in their warehouse in Detroit, although occasionally respondents may direct the manufacturer or distributor of merchandise purchased by them to make delivery of such merchandise direct to the branch office.

In employing sales agents, a contract or agreement is entered into between the corporate respondent and the agent which authorizes the sales agent to solicit orders for merchandise in any territory where the corporate respondent may do business. From time to time agents have taken orders for merchandise from purchasers in States other than the State in which the branch office out of which they are working is located. In such instances the merchandise was forwarded by such branch office to such agent for delivery to the purchaser. A specific example of this practice was the sale and delivery of merchandise out of the Detroit branch office to purchasers located in the city of Toledo, Ohio.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their merchandise, the respondents, through their agents, have made use of a sales plan consisting of false representations and fraudulent schemes. As a part of, and as typical of, the practices followed in furtherance of such sales plan, the agents of the respondents exhibited to purchasers and prospective purchasers samples of merchandise of a kind and quality different from that which the respondents would actually deliver to such purchasers. Typical of this practice was the use by agents of the respondents of a set of International silver as a sample of the merchandise which they were selling and representations that the respondents were engaged in the sale and distribution of International silver or Community silver when in fact the silver actually delivered to the pur-

chasers was National silver. In connection with such sales the respondents, through their salesmen, have represented to purchasers and prospective purchasers that the merchandise so offered for sale was limited in quantity or was being offered at a special sales price when in fact such merchandise was not limited in quantity and was sold at the regular price at which such merchandise was customarily sold by the respondents. In addition, representations have been made to purchasers and prospective purchasers that the merchandise offered for sale by the respondents was at prices which represented a saving from those charged by local retail stores when in fact the prices charged by the respondents were comparable to or higher than the usual and customary prices charged for such merchandise by other retailers thereof. When purchasers objected to the merchandise received or notified the respondents that the merchandise delivered was not of the kind or quality ordered, the respondents did not make an immediate adjustment of said controversy but, instead, attempted to force the purchaser to accept and pay for the merchandise delivered.

PAR. 4. By means of the acts and practices herein described, the respondents have fraudulently induced a substantial portion of the purchasing public to place orders with the respondents for merchandise of a kind and quality different from that which the respondents actually deliver or the purchaser expects to receive. As a result, many members of the public have entered into contracts to purchase respondents' merchandise, and the respondents have failed to make delivery of the merchandise in accordance with the contract or the sample submitted at the time such purchases were made.

CONCLUSION

The 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission

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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 the respondent, Consumers Home Equipment Co., a corporation, and its officers, and the respondents, Avery B. Chereton, Harry H. Chereton, H. H. Gordon, and E. Mallison, individuals, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of silverware, mattresses, blankets, radios, towels, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The use of any sales plan or method which involves the use or display of samples of merchandise of a kind or quality different from that which the respondents actually deliver.

2. Representing, directly or by implication, that respondents are offering for sale merchandise of a kind or quality different from that which the respondents actually deliver.

3. Representing, directly or by implication, that merchandise which is offered for sale at the usual and customary prices therefor are being sold at special or reduced prices; or in any other manner representing that a purchaser is receiving an advantage in price or other consideration not ordinarily available.

4. Representing, directly or by implication, that respondents are making a special offer of a limited quantity of any particular merchandise when such offer is made available to purchasers generally and orders received are filled without limitation.

5. Representing, directly or by implication, that the prices charged by respondents for their merchandise represent a savings from the usual and customary retail price when in fact such prices are equal to, or higher than, the usual or customary price charged for merchandise of like grade and quality by other retailers thereof.

6. Coercing, or attempting to coerce, purchasers to accept merchandise of a kind or quality different from the ordered by refusing or delaying to make adjustment of complaints, or in any other manner.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Mrs. Hannah Chereton.

It is further ordered, That the respondents shall, within 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.

OPINION

The respondents have their principal office at Detroit, Mich., and have established and maintained 14 branch offices in 7 States. They are engaged in the sale and distribution of various articles of merchandise, usually on an installment basis, through and by means of house-to-house canvassers, who report to the branch office in the territory in which they are employed.

The charges of the complaint are directed to various acts and practices alleged to constitute the general plan or method of operation followed by the respondents. This plan consisted of exhibiting to prospective purchasers samples of merchandise of a kind and quality different from that actually delivered by respondents and of making various false and misleading statements concerning the quality and value of the merchandise being sold. As a part of this plan the respondents would endeavor to force the acceptance of merchandise different from that ordered by refusing to return down payments and by threatening suit.

While the testimony and other evidence disclose the foregoing method of operations, the witnesses called were, for the most part, located in the city of Detroit and sales to them constituted intrastate commerce (*Bunte Bros. v. F. T. C.*, 312 U. S. 349). An attempt was made to definitely establish the over-all plan of operation through the testimony of the various officers of respondent corporation. The record indicates that the testimony of these witnesses was vague and that very little direct evidence was produced from them. There was, however, evidence of several transactions consisting of sales made out of the Detroit office to purchasers located in Toledo, Ohio, in which some of the charges of misrepresentation contained in the complaint were sustained.

The Commission is of the opinion that evidence of practices in the city of Detroit, though, competent to indicate respondents' general method of doing business (*Hill's Bros. v. F. T. C.*, 9 F. (2d) 481), should not supply the sole basis for a finding and order in the absence of corroborative evidence of use of similar practices in interstate transactions (*Bunte Bros. v. F. T. C. supra*). Consequently, the findings and the order to cease and desist are limited to those practices which the evidence shows were performed in interstate as well as in intrastate commerce. Further proceedings in the public interest may be instituted if later developments indicate that the respondents are continuing to engage generally in those acts and practices which the evidence was limited to showing had been followed in the Detroit area.

Adopted by the Commission: May 3, 1946.