

Complaint

59 F.T.C.

(d) Preventing or restricting any dealer or distributor who has dealt in respondent's products from dealing in competitive products after he has discontinued dealing in respondent's products.

2. Entering into, continuing or enforcing, or attempting to enforce, any contract, agreement or understanding with any dealer in or distributor of its products for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

It is further ordered, That respondent, Snap-On Tools Corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

By the Commission, Commissioner MacIntyre not participating.

IN THE MATTER OF

ALUMINUM COMPANY OF AMERICA

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT

Docket 8175. Complaint, Nov. 17, 1960—Decision, Nov. 1, 1961

Consent order requiring a manufacturer of aluminum and aluminum products, including "Alcoa Wrap" aluminum foil, with annual sales exceeding \$858,000,000, to cease violating Sec. 2(d) of the Clayton Act by such practices as paying \$150 to a retail grocery chain in Burlington, Iowa, for advertising or other services furnished in connection with the sale of its products while not making any comparable payments to the chain's competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Aluminum Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1501 Alcoa Building, Mellon Square, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of aluminum and aluminum products, including aluminum foil and aluminum foil containers sold under the trade name "Alcoa Wrap". Respondent sells its products to wholesalers and retailers, including retail chain stores and department stores. Respondent's sales of its products are substantial, exceeding \$858,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Pennsylvania to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of \$150.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company in the sale and distribution of products of like grade and quality purchased from respondent.

PAR. 6. The acts and practices of respondent, as alleged, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act, and an agree-

Order

59 F.T.C.

ment by and between respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered.

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and municipal place of business located at 1501 Alcoa Building, Mellon Square, in the city of Pittsburgh, State of Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Aluminum Company of America, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its aluminum foil products or aluminum foil containers in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's aluminum foil products or aluminum foil containers, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

NUTRI-HEALTH, INC., ET AL.

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

Docket 8178. Complaint, Nov. 21, 1960—Decision, Nov. 4, 1961

Consent order requiring Baltimore distributors of a vitamin product designated "Nutri-Health" to cease representing falsely by radio broadcasts, circulars, and other means that they gave a bottle of their product free to those who responded to their offer and paid the "low introductory price" of \$5.00 for one bottle, when \$5.00 was their usual price for two.

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 Nutri-Health, Inc., a corporation, and Charles Finkelstein, Morton Kanter and Bernice Freiberg, individually and as officers 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 Nutri-Health, 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 2 West 25th Street, Baltimore, Maryland.

Respondents Charles Finkelstein, Morton Kanter and Bernice Freiberg are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 a vitamin product designated "Nutri-Health" to the public. Said product is sold in bottles containing 30 tablets each.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Maryland to purchasers thereof located in various other states of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Complaint

59 F.T.C.

PAR. 4. Respondents advertise their said product by means of broadcast over radio stations and by means of circulars and other advertising media. Typical, but not all inclusive, of the said advertisements is the following:

Free vitamins! Yes, absolutely *free* * * * \$5.00 worth of vitamins * * * without a single penny cost! * * * This offer is to introduce the sensational vitamin formula 'Nutri-Health' in (naming a city) * * * I want to give you \$5.00 worth of famous Nutri-Health Vitamin Capsules. * * * Don't send a penny * * * Just send a post card to Vitamins, care of this station or telephone us your name and address. That's all you do * * * and we send you the vitamins *free*. With your free supply we also send an EXTRA month's supply *on approval*. Use the free supply first. * * * if you're not delighted * * * simply *return the extra* supply and you owe nothing. Or, * * * keep the Extra supply and send the Low Introductory price. *The free bottle is yours to keep regardless!* But this offer is limited and may be withdrawn at any time * * * only one supply per family.

PAR. 5. By means of the statements in the aforesaid advertisement and others of similar import not specifically set forth herein, respondents represented, directly or by implication, that \$5.00 is a low introductory price for one bottle of their product and that they are offering to give and do give a bottle free to those who respond to their advertisement, both to those who use one bottle and return the second and also to those who use the two bottles and pay respondents the sum of \$5.00.

PAR. 6. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, \$5.00 is not a low or introductory price for one bottle of said product but is respondents' usual and customary price for two bottles. Those persons who elect to return the second bottle do not receive the first bottle free as they are required to pay the postage charges to return the bottle to respondents and those who elect to keep the second bottle and pay \$5.00 to respondents do not obtain the first bottle free as its price is included in the \$5.00 paid. In addition, in billing the customer for the \$5.00, postage of thirty-five cents for sending the two bottles is added.

PAR. 7. In the 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 of vitamin products.

PAR. 8. The use by 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' product by reason of

1061

Decision

said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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 and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. DeWitt T. Puckett supporting the complaint.

Mr. Vincent A. Kleinfeld, of *Bernstein, Kleinfeld and Alpar*, Washington, D.C., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on November 21, 1960. The complaint charged respondents with making false, misleading and deceptive statements and representations in the pricing of vitamins. Said representations were charged to be unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning, and in violation of the Federal Trade Commission Act.

On September 7, 1961, counsel submitted to the undersigned Hearing Examiner an agreement dated August 30, 1961, and executed by respondents, counsel representing them and counsel supporting the complaint, providing for the entry without further notice of a consent order. The Agreement was duly approved by the Acting Director of the Bureau of Deceptive Practices and by the Chief of the Division concerned.

The Hearing Examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

Order

59 F.T.C.

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the Hearing Examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement, including the proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding; the Hearing Examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent, Nutri-Health, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 2 West 25th Street, in the City of Baltimore, State of Maryland.

2. Respondents, Charles Finkelstein, Morton Kanter and Bernice Freiberg, are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Nutri-Health, Inc., a corporation, and its officers, and Charles Finkelstein, Morton Kanter and Bernice Freiberg, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vitamin products, or any other product, in

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

1. The price at which a product is offered constitutes a reduction from respondents' usual and customary price unless it is less than the price at which the product has been usually and customarily sold by respondents in the recent regular course of business.

2. Any amount is respondents' usual and customary price of a product unless it is the price at which respondents have usually and customarily sold the product in the recent regular course of business.

3. Any product is given free when a payment of any nature is required of the recipient, unless the necessity of such payment and the amount thereof are disclosed at the outset.

4. Any product is given free in connection with the purchase of another of the same product or of a different product when the price of the product purchased is in excess of the usual and customary price charged by respondents for such product.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall on the 4th day of November, 1961, become the decision of the Commission; and, accordingly:

It is 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 the order to cease and desist.

IN THE MATTER OF

ALBERT F. ROBILIO ET AL. DOING BUSINESS AS
ROBILIO & CUNEO

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT

Docket 8294. Complaint, Mar. 2, 1961—Decision, Nov. 6, 1961

Consent order requiring the Memphis, Tenn., manufacturer of "Ronco" macaroni, spaghetti, and noodles to cease discriminating among its customers in paying promotional allowances in violation of Sec. 2(d) of the Clayton Act by such practices as making a preferential payment of \$250 to a retail grocery chain with headquarters in Jacksonville, Fla., while making no offers of comparable payments to the chain's competitors.

