

Complaint

IN THE MATTER OF

FEDERATED NATIONWIDE WHOLESALERS SERVICE,
GARYDEAN CORP. TRADING AS FEDERATED
WHOLESALERS SERVICE, ETC.ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8649. Complaint, Nov. 10, 1964—Decision, June 16, 1967

Order requiring Lynbrook, N.Y., sellers of mail-order merchandise, selling primarily to consumers, to cease misrepresenting themselves as wholesalers who sell at wholesale prices.

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 Federated Nationwide Wholesalers Service, Garydean Corp., trading under the names Federated Wholesalers Service, Nationwide Wholesalers Service, and Nationwide-Federated Wholesalers Service, Jay Norris Corp., and Joel Jacobs and Mortimer Williams, individually and as officers of each 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. Respondent Federated Nationwide Wholesalers Service, Garydean Corp., trading under the names Federated Wholesalers Service, Nationwide Wholesalers Service and Nationwide-Federated Wholesalers Service, 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 in Oceanside, New York.

Respondent Jay Norris Corp., 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 in Oceanside, New York.

Respondents Joel Jacobs and Mortimer Williams are individuals and are officers of each of the corporate respondents. Said respondents formulate, direct and control the acts and practices of each of the said corporate respondents, including the acts and

practices hereinafter set forth. Their 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 articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware, etc., to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused their said articles of merchandise, 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 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 course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, respondents have advertised same by means of circulars and catalogs circulated and disseminated by and through the use of the U.S. Mails to prospective purchasers located in various States of the United States other than the State of New York.

PAR. 5. By and through the use of the trade names "Federated Wholesalers Service," "Nationwide-Federated Wholesalers Service" and "Nationwide Wholesalers Service" separately and in conjunction with statements appearing in their catalogs, circulars and other printed advertising matter, respondents have represented and do represent, directly or by implication, that they are wholesalers and that they sell their merchandise at wholesale prices.

Typical and illustrative, but not all inclusive, of the statements and representations appearing in respondents' catalogs, circulars and letters of solicitation are the following:

Wholesale Catalog No. 908.

Over 1000 items at the lowest wholesale prices GUARANTEED.

Remember: you're getting not ONE, TWO, BUT THREE wholesale catalogs * * *.

BUY YOUR NEXT CAR WHOLESALING AND SAVE UP TO \$1000.

Most people would gladly pay \$10 to \$20 for the privilege of buying wholesale.

PAR. 6. Through the use of the aforesaid trade names and statements, and other statements of like import not specifically set out herein, the respondents have represented, directly or indirectly,

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that they are wholesalers, that the prices set out in their catalogs at which the merchandise is offered for sale are wholesale prices and that in each instance the savings afforded is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 7. In truth and in fact, respondents are not wholesalers, 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 items are in excess of wholesale prices. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 8. Respondents, in their circulars and catalogs distributed as hereinabove set forth, make the following representations, among others:

Nationwide Wholesalers Service.

Federated Wholesalers Service.

Don't continue to pay high prices for the things you need and use everyday. There are many wholesalers in this country who will sell to *YOU! YOU* will be able to obtain *MANY* of the *FINEST WHOLESALE CATALOGS* free of charge * * *.

To help you receive these many free catalogs and take advantage of the many bargains available, we have established the "NATIONWIDE WHOLESALERS BUYING GUIDE * * *." The "NATIONWIDE WHOLESALERS BUYING GUIDE" will show you how to get quickly and at the lowest possible price *THOUSANDS* and *THOUSANDS* of *NATIONALLY ADVERTISED PRODUCTS!*

PAR. 9. Through the use of the aforesaid statements, and others of like import not specifically set out herein, respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices.

PAR. 10. In truth and in fact, respondents are not providing a wholesalers' service and they do not in many instances assist purchasers to buy at wholesale prices. Therefore, respondents' aforesaid representations referred to in Paragraphs--Eight and Nine are false, misleading and deceptive.

PAR. 11. In the course and conduct of their business and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware and other articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 12. 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 mem-

bers of the purchasing public into the erroneous and mistaken belief that said statements were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of the 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(a) (1) of the Federal Trade Commission Act.

Mr. Laurence W. Fenton supporting the complaint.
Bass & Friend, New York, N.Y., by *Mr. Solomon H. Friend*, for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

NOVEMBER 3, 1965

The complaint herein charges respondents with unfair methods of competition and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act.¹

Specifically, the complaint alleges that in advertising, offering for sale, selling, and distributing articles of general merchandise, including electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware, and similar products, to the purchasing public, respondents have represented and do represent, contrary to the fact, that they are "wholesalers" and that their merchandise is being offered for sale at "wholesale" prices. It is further alleged in the complaint that, contrary to the fact, "respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices."

Paragraphs Five through Ten, inclusive, of the complaint assert:

PARAGRAPH FIVE: By and through the use of the trade names "Federated Wholesalers Service," "Nationwide-Federated Wholesalers Service" and "Nationwide Wholesalers Service" separately and in conjunction with statements appearing in their catalogs, circulars and other printed advertising matter, respondents have represented and do represent, directly or by implication, that they are wholesalers and that they sell their merchandise at wholesale prices.

Typical and illustrative, but not all inclusive, of the statements and repre-

¹ 15 U.S.C.A. Section 45(a) (1): "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

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Initial Decision

sentations appearing in respondents' catalogs, circulars and letters of solicitation are the following:

"Wholesale Catalog No. 908."

"Over 1000 items at the lowest wholesale prices GUARANTEED."

"Remember: you're getting not ONE, TWO, BUT THREE wholesale catalogs * * *."

"BUY YOUR NEXT CAR WHOLESALE AND SAVE UP TO \$1000."

"Most people would gladly pay \$10 to \$20 for the privilege of buying wholesale."

PARAGRAPH SIX: Through the use of the aforesaid trade names and statements, and other statements of like import not specifically set out herein, the respondents have represented, directly or indirectly, that they are wholesalers, that the prices set out in their catalogs at which the merchandise is offered for sale are wholesale prices and that in each instance the savings afforded is that amount which is realized by purchasers who buy at actual wholesale prices.

PARAGRAPH SEVEN: In truth and in fact, respondents are not wholesalers, 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 items are in excess of wholesale prices. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

PARAGRAPH EIGHT: Respondents, in their circulars and catalogs distributed as hereinabove set forth, make the following representations, among others:

"Nationwide Wholesalers Service."

"Federated Wholesalers Service."

"Don't continue to pay high prices for the things you need and use everyday. There are many wholesalers in this country who will sell to YOU! YOU will be able to obtain MANY of the FINEST WHOLESALE CATALOGS free of charge * * *."

"To help you receive these many free catalogs and take advantage of the many bargains available, we have established the 'NATIONWIDE WHOLESALERS BUYING GUIDE * * *.' The 'NATIONWIDE WHOLESALERS BUYING GUIDE' will show you how to get quickly and at the lowest possible price THOUSANDS and THOUSANDS of NATIONALLY ADVERTISED PRODUCTS!"

PARAGRAPH NINE: Through the use of the aforesaid statements, and others of like import not specifically set out herein, respondents represent that they are providing a wholesalers' service whereby they assist purchasers to buy at wholesale prices.

PARAGRAPH TEN: In truth and in fact, respondents are not providing a wholesalers' service and they do not in many instances assist purchasers to buy at wholesale prices. Therefore, respondents' aforesaid representations referred to in PARAGRAPHS EIGHT and NINE are false, misleading and deceptive.

In their answer the respondents deny the allegations in Paragraphs Five and Eight of the complaint but admit that certain of their catalogs, circulars, and letters contain the quoted statements.

Respondents deny the allegations in Paragraphs Six, Seven, Nine, and Ten of the complaint.

On March 31, 1965, complaint counsel filed a Motion To Take Official Notice. Pursuant thereto, at a prehearing conference on May 10, 1965, the hearing examiner took official notice that:

* * * the term "Wholesale" means "To sell merchandise, usually in quantity lots, to one who intends to resell it in one form or another, or to use it for business needs as supplies or equipment."

* * * the term "wholesaler" means "One who sells merchandise at wholesale." (Tr. 46.)

The hearing examiner further ruled (Tr. 46-47) that his taking of official notice meant only that a prima facie case as to such noticed facts had been established, and therefore counsel supporting the complaint would not need to introduce evidence as part of their case-in-chief regarding the meaning of those terms. It was pointed out that the taking of official notice did not prevent the respondents, if they chose, from offering evidence as to what respondents considered the correct meaning of the terms to be. (Tr. 47.) (See Commission's Rules of Practice for Adjudicative Proceedings § 3.14(d).)

Complaint counsel seeks an order enjoining respondents from:

1. Representing that they are wholesalers or that their business is a wholesale business;
2. Representing that they are providing a wholesalers' service;
3. Representing that they are offering articles of merchandise for sale at their wholesale prices unless such is the fact;
4. Misrepresenting the amount of savings to persons buying at respondents' alleged wholesale prices; and
5. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise.

The substance of respondents' defense is that they do, in fact, sell items of merchandise at wholesale prices and do provide a means by which their customers may subscribe to a wholesalers' service. Respondents assert, therefore, that their holding themselves out as wholesalers is not a misrepresentation. Respondents assert further that they do provide a wholesalers' service which assists prospective purchasers in buying at wholesale prices.

The Federal Trade Commission has adjudicated issues similar to those presented in this record in prior proceedings, including: Docket 8449, *Majestic Electric Supply Company, Inc.*, (opinion of February 28, 1964) [64 F.T.C. 1166, 1187]; Docket 8466, *Sans & Streiffe, Inc.*, (opinion of July 12, 1963) [63 F.T.C. 138]; Docket 8517, *Continental Products, Inc.*, (opinion of April 23, 1964) [65

