

IN THE MATTER OF  
AMWAY CORPORATION, INC., ET AL.

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

*Docket 9023. Complaint, March 25, 1975 — Final Order, May 8, 1979*

This order, among other things, requires two Michigan corporations engaged in the door-to-door marketing of various household products, and two corporate officers, to cease allocating customers among their distributors; fixing wholesale and retail prices for their products; taking retaliatory action against recalcitrants; and disseminating price-listing data which fail to advise that price adherence is not obligatory. Respondents are additionally prohibited from misrepresenting potential earnings and other relevants to prospective distributors.

*Appearances*

For the Commission: *Joseph S. Brownman, D. Stuart Cameron, Mary Lou Steptoe, B. Milele Archibald and Michael Goldenberg.*

For the respondents: *Lee Loevinger, Philip C. Larson and Robert J. Kenney, Jr., Hogan & Hartson, Washington, D.C. and John E. Stephen, Ada, Mich.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Amway Corporation, Inc. is a corporation organized on or about September 6, 1949, under the name Ja-Ri Corporation, Inc. Its name was formally changed to Amway Corporation in November 1963. On or about January 1, 1964, Amway Sales Corporation, Amway Services Corporation and Amway Manufacturing Corporation, all of which were Michigan corporations, were merged into Amway Corporation, Inc. Respondent corporation maintains its home office and principal place of business at 7575 East Fulton Rd., Ada, Michigan. [2]

PAR. 2. Respondent Amway Distributors Association of the United

States is an association of Amway distributors and dealers, which maintains its home office and principal place of business at 7575 East Fulton Rd., Ada, Michigan. Among the functions and duties of the Amway Distributors Association are to make recommendations to respondent corporation with respect to the standing, termination or suspension of individual distributors or dealers, and to recommend changes or other action on various restrictions upon distributors or dealers.

PAR. 3. Respondent Jay Van Andel is Chairman of the Board of Directors of respondent corporation, and was one of its founders. Together with others, respondent Van Andel instituted the Amway marketing plan and distribution policies, and has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent. Mr. Van Andel's office address is the same as that of respondent corporation.

PAR. 4. Respondent Richard M. DeVos is President of respondent corporation, and was one of its founders. Together with others, respondent DeVos instituted the Amway marketing plan and distribution policies, and has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent. Mr. DeVos' office address is the same as that of respondent corporation.

PAR. 5. Respondent corporation is engaged in the manufacture, distribution, offering for sale and sale of more than 150 kinds of home-care, car-care and personal-care products, as well as vitamins and food supplements, under its own labels and trademarks, to distributors and dealers located throughout the United States. In addition, respondent corporation sells over 300 products manufactured by and bearing the name and label of other manufacturers. These products are of a wide variety including clothing, household appliances, furnishings, tools, luggage, watches, cameras and other items. Sales of products by the respondent corporation is more than \$150,000,000 at retail levels, and over 200,000 persons are actively engaged in the resale of Amway products throughout the United States. [3]

PAR. 6. In the course and conduct of its business of manufacturing and distributing its products, respondent corporation ships or causes such products to be shipped from the state in which they are manufactured and warehoused to distributors or dealers located in various other States throughout the United States. These distributors in turn resell to other distributors, dealers or to members of the general public. There is now and has been for several years last past a constant, substantial, and increasing flow of such products in or

affecting "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 7. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondent corporation's distributors and dealers, in the course and conduct of their business of distributing, offering for sale, and selling their products are in substantial actual competition or potential competition in commerce with one another, and corporate respondent is in substantial actual or potential competition in commerce with other persons or firms engaged in the manufacture, sale and distribution of similar merchandise.

PAR. 8. Respondents have formulated a distribution system which has been published in various manuals, bulletins, pamphlets and other literature and material. To effectuate and carry out the policies of this distribution system, corporate respondent has entered into contracts, agreements, combinations or common understandings with its distributors and dealers; and has adopted, placed into effect, enforced and carried out, by various methods and means, said distribution system, which hinders, frustrates, restrains, suppresses and eliminates competition in the offering for sale, distribution and sale of its various products.

PAR. 9. Distributors and dealers of respondent corporation are independent contractors who sell or attempt to sell at retail to members of the consuming public, and at wholesale to other distributors and dealers recruited and/or sponsored into their respective sales organizations. Except for "Direct Distributors," distributors or dealers generally purchase their product needs directly from their sponsors. [4]

Distributors buying directly from respondent corporation are denoted "Direct Distributors," of which there are approximately fifteen hundred (1500) throughout the United States. Other distributors or dealers may purchase directly from Amway Corporation after meeting certain conditions.

In concert and combination with their network of distributors and dealers, respondents police, enforce and carry out the various rules, regulations and policies, including those alleged hereinafter as unfair methods of competition and unfair or deceptive acts or practices.

#### COUNT I

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 10. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents, respondent corporation's distributors or dealers, or others not parties hereto tend to, and do, fix, maintain, control or tamper with the resale prices at which respondent corporation's products are or may be sold.

PAR. 11. For example, distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to sell to other distributors or dealers at other wholesale levels of distribution at the same prices which they paid for their products from other distributors or dealers or from respondent Amway Corporation. Distributors or dealers must thereafter rely upon the implementation of and adherence to respondents' purchase volume refund schedule for wholesale profits.

Under this purchase volume refund plan, refunds are paid by respondent Amway Corporation to its direct buying "Direct Distributors" on a monthly basis at the rate of 25% of the monthly dollar volume of purchases figured at the retail price. These sponsoring distributors, in turn, pay rebates to their wholesale customers of from 0 to 25%, based upon their own monthly dollar volume of purchases, and so on, to all wholesale levels of distribution. [5]

PAR. 12. By way of further example, distributors and dealers have also agreed to sell to church, service, civic or charitable selling organizations at specified prices, and to in turn request these organizations to adhere to these same retail prices when selling to the ultimate consumer. Thereafter the distributor or dealer will pay the selling organization a sum of money which will become its gross income on the aforesaid sales.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

#### COUNT II

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 13. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents, respondent

corporation's distributors or dealers, or others not parties hereto tend to, and do, restrict the customers to whom respondent corporation's distributors or dealers may resell their products; restrict distributors and dealers as to the source of their product needs; restrict the retail outlets through which distributors and dealers may resell their products; and allocate retail customers between and among the various distributors or dealers.

PAR. 14. Distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to adhere to practices whereby absent prior approval to the contrary, purchases of product needs must be made either directly from respondent corporation or from the distributor or dealer who recruited and/or [6] sponsored the would-be purchasing distributor or dealer. Distributors and dealers may not resell their products at wholesale except to those other distributors or dealers they had recruited and/or sponsored, and who are recognized as such by respondents. Distributors or dealers who drop out of the program are replaced in the chain of distribution by other distributors or dealers to whom the former had previously been selling.

PAR. 15. Distributors and dealers have also entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to refrain from selling from or through any business office, retail store, military store, ship's store, service station, barber shop, beauty salon, show booth, fair or the like, and to refrain from selling to proprietors of such establishments for resale at the retail level.

PAR. 16. Distributors and dealers have also entered into contracts, agreements, combinations or understandings with respondents, or have been required and coerced by respondents to refrain from soliciting the business of retail customers and commercial accounts of other distributors or dealers.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

### COUNT III

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 17. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combina-

tion, conspiracy, agreements or common understandings entered into or reached between and among the respondents, respondent corporation's distributors or dealers, or others not parties hereto tend to, and do, restrict the advertising and promotional activities in which distributors and dealers may or would otherwise engage. [7]

PAR. 18. Distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been required and coerced by respondents to refrain from engaging in or limiting advertising activities as follows:

1. Distributors and dealers may not display literature or merchandise in the locations from which retail sales activities are prohibited.

2. "Direct Distributors" only may display the "Amway" trade-name, trademarks or logos on the exterior of their places of business; provided that in addition thereto the place of business is a commercial type building, the place of business is an exclusively Amway business, no displays appear in any show windows, a view from the outside looking in is obscured, and "Wholesale Only" must appear on the door leading in.

3. Distributors and dealers other than "Direct Distributors" must obtain the permission of the Direct Distributors from whose chain of distribution they purchase merchandise before the Amway logo may be displayed on business vehicles.

4. "Direct Distributors," with prior permission, may advertise in the "white pages" of the telephone directory under the "Amway" tradename, whereas other distributors or dealers may not.

5. Distributors and dealers may not utilize display ads in "yellow pages" telephone directories wherein it is indicated that the distributor or dealer deals in Amway merchandise.

6. Distributors and dealers may not set up displays at fairs, home shows or other special events unless they do so in concert, and under the direction of a "Direct Distributor." [8]

7. "Direct Distributors" only may utilize roadside advertising.

8. Distributors and dealers other than "Direct Distributors" may not advertise in newspapers, magazines or on the radio or television.

9. Distributors and dealers may only place recruiting ads which do not mention the name "Amway."

10. Distributors and dealers may not advertise specific Amway products in the media.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce

