

Modifying Order

IN THE MATTER OF

SANITARY CARPET AND RUG CLEANING COMPANY,
INC., TRADING AS CARPETLAND, ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-1490. Complaint, Feb. 3, 1969—Decision, Sept. 1, 1970

Order modifying an earlier consent order dated February 3, 1969, 75 F.T.C. 231, by adding a paragraph thereto which forbids respondents from failing to maintain adequate records upon which its prices and savings are based.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 3, 1969 [75 F.T.C. 231], having issued its order in this matter requiring respondents, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, to cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to set forth that the required disclosure as to the fiber content of floor coverings relates only to the face, pile, or outer surface of such products and not to exempted backing, filling or padding, when such is the case.

B. Falsely and deceptively advertising textile fiber products by:

1. Making any representations by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote or assist, directly or indirectly, in the sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label or other means of identification under Section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Failing to set forth in disclosing fiber content information as to floor coverings containing exempted backings, fill-

Modifying Order

77 F.T.C.

ings or paddings, that such disclosure relates only to the face, pile or outer surface of such textile fiber products and not to the exempted backings, fillings, or paddings.

3. Using a fiber trademark in advertising textile fiber products without a full disclosure of the required fiber content information in at least one instance in said advertisement.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing at least once in the advertisement, in immediate proximity and conjunction with a generic name of the fiber, in plainly legible and conspicuous type.

It is further ordered, That respondents Sanitary Carpet and Rug Cleaning Company, Inc., a corporation, trading and doing business as Carpetland, or under any other name, and its officers, and Aram Sakayan and Edward Turmanian, individually and as officers of said corporation, and George Sakayan, individually and as general manager of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of carpeting, rugs, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Reg." or any other word or words of similar import or meaning, to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by respondents for a reasonably substantial period of time in the recent, regular course of their business, or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by respondents.

2. Using the word "SAVE," or any other word or words of similar import or meaning, in conjunction with a stated percentage, fraction, dollar or other amount of savings: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the stated amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise has been sold or offered for sale on a regular basis to the public by respondents for a reasonable substantial period of time in the recent, regular course of their business.

3. Using the words "WAREHOUSE SALE," "Sale price," or any other term or words of similar import or meaning, in conjunction

Modifying Order

with any stated price or prices: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that their prices for the merchandise so advertised have been substantially reduced below respondents' usual selling prices, or the prices at which such merchandise has been offered for sale in good faith by respondents during the recent, regular course of their business.

4. Using the words "SPECIAL PURCHASE SALE" or any other term or words of similar import or meaning, either alone or in conjunction with an offering price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the offering price during said sale is a substantial reduction from the price usually and customarily paid by respondents for the same merchandise, and purchasers are thereby afforded bona fide savings from respondents' usual and customary retail prices for such merchandise.

5. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

6. Representing, through advertisements or in any other manner, that sponge rubber padding will be installed with respondents' rugs or carpeting unless such padding is, in fact, installed in every instance as represented, or misrepresenting, in any manner the nature or type of padding sold or installed by respondents.

7. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

And the Commission on June 8, 1970, having issued its order to show cause why this proceeding should not be reopened and its order of February 3, 1969, modified by the addition of a new paragraph numbered 8 which will read:

8. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of mer-

Modifying Order

77 F.T.C.

chandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2, 3, 4 and 5 of the "*It is further ordered . . .*" portion of this order, are based, and from which the validity of any such claim can be established.

Respondents not having filed an answer in which the order to show cause is opposed; and more than thirty days having expired since service of the order to show cause upon the respondents; and

The Commission being of the opinion that the public interest will be served best by modifying its order of February 3, 1969:

It is ordered, That this proceeding be, and it hereby is reopened.

It is further ordered, That the Commission's order of February 3, 1969 [75 F.T.C. 231], be and it hereby is, modified by adding thereto as Paragraph 8 the following:

8. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2, 3, 4 and 5 of the "*It is further ordered . . .*" portion of this order are based, and from which the validity of any such claim can be established.

IN THE MATTER OF

CONSUMERS FOOD, INC., ET AL.

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

Docket C-1499. Complaint, Feb. 25, 1969—Decision, Sept. 1, 1970

Order modifying an earlier consent order dated February 25, 1969, 75 F.T.C. 364, by adding a paragraph thereto which forbids respondents from failing to maintain adequate records which disclose the facts on which its prices and savings to customers are based.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 25, 1969, having issued its order in this matter requiring respondents, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, to cease and desist from:

1. Representing, directly or by implication, through the use

of terms such as "ANNIVERSARY SALE SPECIAL" or in any other manner, that any price is a special or reduced price unless such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

2. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise, or misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

3. Representing, directly or by implication, in any manner, that the price per pound of meat is a net weight price when in fact the price per pound of meat is based on the weight of the meat before trimming.

4. Failing to clearly and conspicuously disclose, in the body of any advertisement for meat that is to be sold by gross weight, the average percentage of weight loss that results from trimming.

5. Representing, directly or by implication, that purchasers of respondents' freezer food plan can buy their usual food requirements and a freezer for the same or a lesser amount of money than they have been paying for said food requirements alone.

6. Representing, directly or by implication, that food prices charged by respondents are significantly lower than the prices which they have been paying.

7. Representing, directly or by implication, that purchasers cannot buy food under respondents' food plan unless a freezer is purchased from respondents.

8. Failing to disclose orally, prior to the time of sale, and in writing with such conspicuousness and clarity as is likely to be observed and read by such purchaser:

A. on any conditional sale contract, and

B. on a separate document presented to a purchaser of respondents' merchandise concurrent with the execution of any promissory note or other instrument of indebtedness executed by such purchaser, that such conditional sale contract, promissory note or other instrument of indebtedness, at respondents' option and without notice to the purchaser, may be discounted, negotiated or assigned to a finance company or other third party to whom the purchaser will thereafter be indebted and against whom the purchaser's claims or defenses may not be available.

Modifying Order

77 F.T.C.

PART II

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of food, or any purchasing plan involving food, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations or misrepresentations prohibited in Paragraphs 1 through 7 of PART I of this order.

2. Disseminating, or causing the dissemination of, any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any food or any purchasing plan involving food in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraphs 1 through 7 of this order.

PART III

It is further ordered, That respondents Consumers Food, Inc., a corporation, and its officers, and George Sharkey, individually and as an officer of said corporation, do forthwith deliver a copy of this order to each of its operating divisions and to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and secure from each such salesman or other person a signed statement acknowledging receipt of said order.

And the Commission on June 8, 1970, having issued its order to show cause why this proceeding should not be reopened and its order of February 25, 1969, modified by the addition of a new paragraph

9. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2 and 6 of Part I of this order, are based and from which the validity of any such claim can be established.

Respondents having filed an answer in which the order to show cause is not opposed; and more than thirty days having expired since service of the order to show cause upon the respondents; and

The Commission being of the opinion that the public interest will be served best by modifying its order of February 25, 1969:

It is ordered, That this proceeding be, and it hereby is reopened.

It is further ordered, That the Commission's order of February 25, 1969 [75 F.T.C. 364], be and it hereby is, modified by adding thereto as Paragraph 9 of Part I the following:

9. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 1, 2 and 6 of Part I of this order, are based and from which the validity of any such claim can be established.

IN THE MATTER OF

LIFE ELECTRONICS CORPORATION INC., TRADING AS
LITE ELECTRONICS, INC., ETC.

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

Docket C-1566. Complaint, July 28, 1969—Decision, Sept. 1, 1970

Order modifying an earlier consent order dated July 28, 1969, 76 F.T.C. 160, by adding a paragraph thereto which forbids respondent from failing to maintain adequate records upon which its prices and savings to customers are based.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on July 28, 1969 [76 F.T.C. 160], having issued its order in this matter requiring respondents, in connection with the offering for sale, and sale and distribution of merchandise, in commerce, to cease and desist from:

1. Representing, directly or by implication, that respondents' merchandise or appliances repaired by respondents are guaranteed, unless the nature, conditions and extent of the guarantee, identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed

in immediate conjunction therewith, and unless all such guarantees are in fact honored and the terms thereof promptly fulfilled.

2. Representing, directly or by implication, the price of repair service of television sets or of other appliances, unless in conjunction with the advertised price for said service, respondents clearly and conspicuously disclose the nature and scope of the service rendered for the advertised price.

3. Representing, directly or by implication, that respondents can service and repair most television sets or other appliances in the customer's home; or otherwise misrepresenting the extent to which respondents can provide in-home repair service.

4. Representing, directly or by implication, that any rebuilt or reconditioned picture tube is new.

5. Failing to disclose in invoices, warranties and advertising of rebuilt or reconditioned picture tubes that such picture tubes are rebuilt or reconditioned and contain used parts.

6. Using words "Clearance Sale" or any other word or words of similar import and meaning unless the price of such merchandise being offered for sale constitutes a reduction, in an amount not so insignificant to be meaningless, from the actual bona fide price at which such merchandise has been offered or sold by respondents for a reasonably substantial period of time in the recent, regular course of their business and respondents' business records establish the price at which such merchandise has been offered or sold by respondents for a reasonably substantial period of time in the recent, regular course of their business.

7. Using the word "Save" or any other word or words of similar import and meaning in conjunction with a stated percentage amount of savings, unless the stated percentage amount of savings actually represents the difference between the offering price and the actual bona fide price at which such merchandise has been sold or offered for sale on a regular basis to the public by respondents for a reasonably substantial period of time in the recent, regular course of their business.

8. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise or services; or misrepresenting in any manner the amount of savings available to purchasers or prospective purchasers of respondents' merchandise or services at retail.

9. Failing to provide repair service within the period of time respondents inform customers that said service will be completed, unless respondents obtain from such customers a signed state-

ment permitting completion of the repair service beyond the time period originally specified by respondents: *Provided, however,* If customers do not agree to delay in completion of service, respondents will promptly return articles left for repair to customers without cost and in the same condition such articles were left for repair with respondents.

10. Failing to honor guarantees within thirty (30) days after respondents receive a request for service under said guarantees, unless respondents obtain a signed statement from customers permitting respondents to comply with the provisions of the guarantees beyond the aforesaid time period:

Provided, however, If respondents do not obtain such agreements from customers, respondents will:

A. Refund all monies received in the purchase of items of merchandise under guarantees; or

B. Refund all monies received for repairs of appliances under guarantees; or

C. In instances when respondents have not received monies under the situations described in Subparagraphs A and B hereof, respondents will return all appliances received for repair under guarantees in the same condition the appliances were in when left for repair with respondents.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

And the Commission on June 8, 1970, having issued its order to show cause why this proceeding should not be reopened and its order of July 28, 1969, modified by the addition of a new paragraph numbered 11 which will read:

11. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 6, 7, and 8 of this order, are based, and from which the validity of any such claim can be established.

Respondents not having filed an answer in which the order to show cause is opposed; and more than thirty days having expired since service of the order to show cause upon the respondents; and

The Commission being of the opinion that the public interest will be served best by modifying its order of July 28, 1969:

It is ordered, That this proceeding be, and it hereby is reopened.

It is further ordered, That the Commission's order of July 28, 1969 [76 F.T.C. 160], be and it hereby is, modified by adding thereto as Paragraph 11 the following:

Modifying Order

77 F.T.C.

11. Failing to maintain adequate records which disclose the facts upon which representations as to former prices, comparative prices, and the usual and customary retail prices of merchandise, and as to savings afforded to purchasers, and similar representations of the type dealt with in Paragraphs 6, 7, and 8 of this order, are based, and from which the validity of any such claim can be established.

IN THE MATTER OF

WHITE DRUG CO. OF JAMESTOWN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 2(F) OF THE CLAYTON ACT

Docket C-1788. Complaint, Sept. 1, 1970—Decision, Sept. 1, 1970

Consent order requiring a chain of retail drug stores with headquarters in Jamestown, N.D., to cease violation of Section 2(f) of the Clayton Act by knowingly inducing and receiving discriminatory prices from pharmaceutical suppliers.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13) and Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent corporations collectively doing business as White Drug Co. or White Drug Enterprises, but individually organized, existing and doing business under and by virtue of the laws of the States of their incorporation as below designated and hereinafter referred to as White Drug, are as follows:

White Drug Co. of Jamestown, Inc., a North Dakota corporation	White University Drug, Inc., a North Dakota corporation
Capital Drug Company, a North Dakota corporation	White Drug of Minot, Inc., a North Dakota corporation
White's, Inc., a North Dakota corporation	White Drug Co. of Fergus Falls, Inc., a Minnesota corporation
White Drug Co. of Grand Forks, a North Dakota corporation	White Plaza Drug, Inc., a North Dakota corporation

White Drug of Aberdeen, Inc.,
 a South Dakota corporation
 White Drug of Dickinson, Inc.,
 a North Dakota corporation
 White Drug of Huron, Inc.,
 a South Dakota corporation

White Drug Co. of Willmer, Inc.,
 a Minnesota corporation
 White Drug of Detroit Lakes,
 Inc., a North Dakota corporation

With their principal place of business located at 201-205 First Avenue South, Jamestown, North Dakota.

Respondent Max A. Retzlaff, 201-205 First Avenue South, Jamestown, North Dakota, is the chief executive officer of all corporations comprising White Drug and has been and is responsible, in part, for the direction, policy and control of White Drug. He is named as a respondent herein in his individual capacity and as the chief executive officer of White Drug.

Respondent The Lutheran Charity Association doing business as Jamestown Hospital, hereinafter referred to as Jamestown Hospital, is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota with its principal office and place of business located at 419 5th Street, NE., Jamestown, North Dakota.

PAR. 2. White Drug has purchased and now purchases in commerce from suppliers engaged in commerce numerous prescription drugs and other related pharmaceutical supplies and equipment for use, consumption, or resale within the State of North Dakota. White Drug causes some of the prescription drugs and other related pharmaceutical supplies and equipment to be shipped and transported for resale in such other States as South Dakota and Minnesota. White Drug and said suppliers are, therefore, engaged in commerce as "commerce" is defined in the Clayton Act.

PAR. 3. Although the major part of White Drug prescription drug and other related pharmaceutical supplies and equipment purchases are made directly for the account of White Drug, substantial quantities of such drugs are purchased via the account of Jamestown Hospital, a sizable portion of which are used for the commercial purpose of White Drug.

PAR. 4. In the purchase, use and resale of said prescription drugs and other related pharmaceutical supplies and equipment, White Drug is in active competition with independent persons, partnerships and corporations not affiliated with it nor Jamestown Hospital, and the suppliers selling to White Drug, Jamestown Hospital and their independent competitors are in active competition with other suppliers of similar products and supplies.

PAR. 5. The arrangement, agreement, or concerted action between

White Drug and Jamestown Hospital was initiated approximately nine years ago. Since its inception, it has evolved, in part, into a means of obtaining a discriminatory price for White Drug.

In practice and effect, respondent Jamestown Hospital has been and is now serving as the medium or instrumentality by, through or in conjunction with which respondent White Drug has exerted influence on the competitive suppliers hereinabove described and thereby has knowingly demanded and received on its purchases discriminatory prices, discounts, allowances, rebates and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them, in whole or in substantial part, in favor of such suppliers as can be, and are, induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

This procedure effects a discrimination in price on goods of like grade and quality between White Drug and competing independent persons, partnerships and corporations.

PAR. 6. The effect of knowing inducement or receipt by respondents of the discriminations in price, as above alleged, has been, and may be, substantially to lessen, injure, destroy or prevent competition between suppliers of prescription drugs and other related pharmaceutical supplies and equipment granting such discrimination, and other suppliers of such products who do not grant or allow such discriminations; and also between White Drug and competing independent customers not receiving or securing such discriminations.

PAR. 7. The foregoing acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act and Section 5 of the Federal Trade Commission Act.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of either the Federal Trade Commission Act or the Clayton Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, White Drug, is comprised of affiliated corporations organized, existing and doing business under and by virtue of the laws of the State of their respective incorporation, as indicated below, with the principal office and place of business located at 201-205 First Avenue South, Jamestown, North Dakota.

2. Respondent, Jamestown Hospital, incorporated under the name of the Lutheran Charity Association, is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Dakota with its principal office and place of business located at 419 5th Street, NE., Jamestown, North Dakota.

3. Respondent, Max A. Retzlaff is president of all corporations comprising White Drug and is a member of the Board of Trustees of Jamestown Hospital. He has been responsible, in part, for the direction and control of the corporations comprising White Drug. His address is 205 First Avenue South, Jamestown, North Dakota.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents White Drug, including each of the following:

White Drug Co. of Jamestown, Inc., a North Dakota corporation.	White's, Inc., a North Dakota corporation.
Capital Drug Company, a North Dakota corporation.	White Drug Co. of Grand Forks, a North Dakota corporation.

