

Decision and Order

shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

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

It is further 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 this order.

IN THE MATTER OF

MRS. S. E. KATZ TRADING AS S. E. KATZ

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1984. Complaint, July 20, 1971—Decision, July 20, 1971

Consent order requiring a St. Louis, Mo., individual engaged in the sale and distribution of textile fiber products, including scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mrs. S. E. Katz, an individual trading as S. E. Katz, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Mrs. S. E. Katz is an individual trad-

ing as S. E. Katz with her office and principal place of business located at 1000 Washington Avenue, St. Louis, Missouri.

Respondent is engaged in the business of the sale and distribution of textile fiber products including, but not limited to, scarves.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Acts, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed 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 Mrs. S. E. Katz is an individual trading as S. E. Katz.

Respondent is engaged in the sale of various products, including but not limited to, ladies' scarves, with her office and principal place of business located at 1000 Washington Avenue, St. Louis, Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of the proceeding and of the respondent and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Mrs. S. E. Katz, individually and trading as S. E. Katz or any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of her customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect recall of said products from such customers.

It is further ordered, That the respondent herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon her of this order, file with the Commission a special report in writing setting forth the respondent's inten-

tions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect recall of said products from customers, and of the results thereof, (4) any disposition of said products since September 20, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondent shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

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

IN THE MATTER OF

BARTON'S CANDY CORPORATION

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

Docket C-1985. Complaint, July 21, 1971—Decision, July 21, 1971

Consent order requiring a Brooklyn, N.Y., candy and bakery goods manufacturer and franchisor with outlets in more than 40 states to cease fixing the resale price of any of its products, accepting any payment or other advantage from a supplier of fixtures to any of respondent's customers, misrepresenting that any analysis has been made of any projected sales volume of any store; it is further ordered that respondent notify each of its franchisees of the existence and terms of this order.

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 Barton's Candy Corporation, a corporation, sometimes referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of said Act (15 U.S.C. § 45), 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 in respect thereto as follows:

PARAGRAPH 1. Respondent Barton's Candy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It maintains its principal offices and place of business at 80 DeKalb Avenue, Brooklyn, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, purchase, importation, offering for sale, sale, or distribution of chocolates, other candies and confections, baked goods, and nuts (hereinafter referred to as "products"). Respondent distributes, offers to sell, and sells its products to franchised "Barton's Bonbonniere" candy stores, to other franchised customers who maintain candy departments in department stores and drug stores, to wholesale distributors in some areas in which retailers cannot be serviced efficiently from the Brooklyn shipping point, and to consumers through company-owned stores in some areas. Total sales of respondent in its fiscal year ending June 30, 1969, exceeded \$16,000,000.

PAR. 3. Respondent ships products or causes products to be shipped to wholesale distributors and to nearly 3,000 retail stores or candy departments located in more than forty States of the United States. Respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent is engaged in competition in the distribution, offering for sale, and sale of its products with numerous other persons or firms handling similar types of products, except to the extent that such competition has been hampered, restricted, lessened and restrained by the acts, practices, and methods of competition hereinafter alleged.

COUNT ONE

PAR. 5. Respondent has sought prospects for investment in franchised Barton's retail outlets through newspaper advertisements, promotional brochures, and the personal effort of its agents or employees responsible for the establishment of new franchise operators.

In this connection, respondent has made the following representa-

tions to some prospective franchise operators through oral statements and some of its published materials:

1. A specific site has been selected by respondent for establishment of a franchise outlet. A survey has been conducted and the results electronically analyzed. According to such analysis, the volume of sales by such outlet should be approximately that amount which, in each specific instance, has been stated to the prospective franchisee.

2. An average Barton's department will have annual candy sales of up to as much as \$49,000, depending upon the size and location of the store.

PAR. 6. The representations aforesaid, each of which has been made for the purpose and with the effect of inducing prospects to enter into a franchise agreement, are false and misleading in that:

1. Information respecting selected sites has not been analyzed electronically or by other means. The volume of sales projected for each such site has been based solely upon opinion of respondent, its authorized agent or employee.

2. The annual retail sales volume of candy for the average franchised Bartons candy department such as those located in drug stores has been in all recent years and is now substantially less than \$49,000. No significant number of Barton's candy departments such as those located in drug stores have achieved a sales volume of as much as \$49,000, as represented by respondent.

PAR. 7. Respondent's false and misleading representations aforesaid are to the prejudice of the public; they have induced or helped to induce persons or firms to enter into franchise agreements with respondent and to purchase its products; and they constitute unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT TWO

PAR. 8. Respondent, in accordance with the provisions of its franchise agreements, has reserved the right of approval of the plans and layout of Barton's franchised candy stores and candy departments. In this connection, respondent has recommended an on occasions has required directly or by implication, that its franchise operators purchase store fixtures and signs from manufacturers or fabricators designated by respondent.

PAR. 9. Respondent has failed to disclose to the franchise operators aforesaid that in some instances it has contracts, agreements, or understandings with the designated persons or firms supplying such fixtures and signs providing for payment to respondent of commissions, overrides, or service charges as compensation for engineering

or store planning services or "finder's fees" based upon a percentage of the purchase price of such fixtures or signs.

PAR. 10. Respondent's contracts, agreements, understandings, acts, practices, and methods of competition, including its failure to disclose the existence of its arrangements for compensation by suppliers designated by it, as aforesaid, have had and may continue to have the following effects, among others:

1. Some franchise operators have been led to believe, directly or by implication, that the recommendation or requirement by respondent to the purchase fixtures and signs from designated suppliers was based solely upon considerations of price, quality or service.

2. Some franchise operators have been deprived of the benefits of competition in their purchases of store fixtures and signs.

PAR. 11. Respondent's contracts, agreements understandings, acts, practices, and methods of competition aforesaid are to the prejudice of its franchise operators and the general public. They constitute unfair or deceptive acts or practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT THREE

PAR. 12. Respondent has entered into franchise agreements with numerous persons and firms which require that each retailer advertise, offer to sell, and sell respondent's products at not less than the retail prices established by respondent in accordance with the applicable "fair trade" laws. Respondent, directly or through corporate or other devices, is regularly engaged in the operation of retail outlets in some areas which are in competition with franchise operators who have signed agreements pursuant to which they are required to price products bearing respondent's trademarks in accordance with respondent's published "fair trade" prices.

PAR. 13. Respondent's acts, practices and methods of competition aforesaid which fix the resale prices of its products when sold by its franchised retail or wholesale competitors are to the prejudice of such competitors and of the public. They constitute unfair acts or practices or unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a

copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, 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 Section 2.34(b) of its Rules, and having considered all comments received from members of the public, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Barton's Candy Corporation is a corporation which has its general offices and principal place of business located at 80 DeKalb Avenue, Brooklyn, New York.

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

ORDER

I

It is ordered, That respondent Barton's Candy Corporation, a corporation, its officers, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the advertising, distribution, offering for sale, or sale of chocolates, other candies and confections, baked goods, nuts, and the franchise rights to deal in or handle such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Fixing, establishing, maintaining, or enforcing pursuant to or in connection with any fair trade program the resale price of any such product charged by any wholesaler or retailer who in

fact competes with Barton's either at wholesale or with retail stores or candy departments operated by the respondent.

2. Requesting, accepting, or entering into any contract, agreement or understanding providing for payment to respondent of anything of substantial value by the supplier of fixtures, signs, or other equipment and furnishings as a commission, override, "finder's fee," or other compensation for recommending or requiring any customer of respondent to deal with such supplier unless such customer of respondent is advised prior to entering into any franchise or other agreement of the fact that respondent will receive said compensation from such supplier and the approximate amount, percentage, or other means of computation thereof.

3. Representing, directly or by implication, that:

a. A survey has been made of store traffic patterns or that electronic or other means of analysis of projected sales volume has been performed, unless such is a fact.

b. Sales volume of a Barton's store or department is within a range, is a stated average amount, or may achieve a stated level, unless such is a fact with respect to a representative sample of outlets of comparable size, type and location.

II

It is further ordered, That respondent Barton's Candy Corporation furnish within sixty (60) days from the date hereof to all presently franchised retail outlets, wholesale distributors or other customers who in fact compete, or whose customers in fact compete, with Barton's or with retail stores or candy departments operated by respondent a letter or other notice, signed by a responsible official binding the respondent and on official Barton's Candy Corporation stationery or letterhead, which states in its first paragraph: "The Federal Trade Commission has entered an Order which, among other things, prohibits Barton's Candy Corporation from fixing resale prices of its customers as more fully set forth in the relevant provisions of the order which are [stated below/enclosed]." The relevant provisions of this order which shall be included in such letters are the opening paragraph and numbered Paragraph 1 of Section I thereof.

III

It is further ordered, That respondent Barton's Candy Corporation shall forthwith distribute a copy of this order to each of its

sales personnel and each of its other employees engaged in establishing and maintaining franchises.

IV

It is further ordered, That respondent Barton's Candy Corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other change in the corporation.

V

It is further ordered, That respondent Barton's Candy 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 this order.

IN THE MATTER OF

BESTLINE PRODUCTS CORPORATION, ET AL.

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

Docket C-1986. Complaint, July 22, 1971—Decision, July 22, 1971.

Consent order requiring a San Jose, Calif., seller and distributor of household, commercial and industrial cleaners and waxes, and also distributorships for the sale of respondents' products, to cease operating a multi-level program in which profits are dependent upon successive recruitment of others, paying any amount to any person unless in connection with the actual sale of products to the ultimate consumer, requiring prospective participants to make any other payment than that of the actual cost of materials, misusing in any manner the multi-level marketing program, misrepresenting the past earnings of participants, and making other misrepresentations as to the earnings of participants in the multi-level marketing programs.

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 Bestline Products Corporation and Bestline Products, Inc., corporations, and William E. Bailey and Robert W. DePew, individually and as officers 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 Bestline Products Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2350 Trimble Road, San Jose, California.

Respondent Bestline Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2350 Trimble Road, San Jose, California. It is a wholly-owned subsidiary of Bestline Products Corporation.

Respondents William E. Bailey and Robert W. DePew are officers and stockholders of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household, commercial and industrial cleaners and waxes and distributorships and franchises to the public, and are inducing, and have induced, persons to invest substantial sums of money in respondents' multi-level marketing program as hereinafter more fully described.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their products, when sold, to be shipped from their places of business in the States of Illinois and California to purchasers thereof located in various States of the United States other than the state of origination, and in the course of establishing and maintaining their multi-level marketing program have transmitted and received contracts, promotional material and various business papers among and between the several states, 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,

respondents have used and are now using a multi-level marketing program having four levels of participants. A description of these levels, in order of ascendancy, follows:

1. Retail distributor—The retail distributor purchases products from a subwholesaler or direct distributor at a 30-40 percent discount, for sale to the consuming public.

2. Subwholesaler—The subwholesaler purchases products from a direct-distributor at a 30-51 percent discount for distribution to retail distributors and direct sales to the consuming public. The subwholesaler is entitled to overrides on purchases by retail distributors below him in the chain. He is also entitled to a bonus for recruiting a direct distributor and a commission for recruiting another subwholesaler. An entrant qualifies as a subwholesaler upon purchasing products with a \$400 "refund volume" value.

3. Direct distributor—The direct distributor purchases products directly from the respondents at a 52 percent discount for distribution to subwholesalers and retailers below him in the chain. He is entitled to 22 percent of the "refund volume" value of purchases, made by subwholesalers and retail distributors below him in the chain, less refund bonuses paid according to the sales volume generated by these subdistributors. The direct distributor also receives a commission and continuing override on purchases by a direct distributor or subwholesaler who he has recruited into the marketing program. A participant qualifies as a direct distributor upon purchasing \$6,000 "refund volume" value of products at a cost of \$3,500.

4. General distributor—The general distributor does not normally purchase products for distribution in the chain but he may purchase products at a 60 percent discount. The general distributor is entitled to a commission and continuing override on all purchases by a direct distributor recruited by him, a release fee paid by a direct distributor recruited by him at such time as the direct distributor ascends to the position of general distributor, and a commission and continuing override on all purchases by a general distributor originally recruited by him.

To qualify as a general distributor, a participant must first be a direct distributor, and is required to pay \$2,750 to the respondents and recruit a direct distributor to replace him.

Participants at each level of distribution may sell products on a retail basis to the consuming public.

Respondents represent through oral and written statements to prospective investors that it is not difficult to sell their household cleaning products and to recruit additional participants in their market-

ing plan and thereby achieve high levels of income. Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

1. If a subwholesaler recruits six (6) retailers and each of those six buy from the subwholesaler \$200 in products in one month, and in addition the subwholesaler sells \$200 in products at the retail level, the subwholesaler will earn in profit \$210 that month.

2. In the following month, if each of the six (6) retailers initially recruited by the subwholesaler in the example above recruits six (6) retailers below them in the chain, the subwholesaler may become a direct distributor and the initial six (6) retailers may become subwholesalers. If each of the thirty-six (36) new retailers buys \$200 in products from their respective subwholesalers, and the six (6) subwholesalers buy \$1,400 in products from the direct distributor, and the direct distributor sells \$200 in products at retail, the direct distributor will earn in profit \$1,046 that month.

PAR. 5. Respondents' multi-level marketing program contemplates a virtually endless recruiting of participants in the sales program. Further, additional participants must increase progressively to insure the participants the represented financial gains while the overall number of potential investors remains relatively constant. Thus, the participant may be, and in a substantial number of instances will be, unable to find additional investors in a given community or geographical area by the time he enters respondents' merchandising program. This comes about because the recruiting of participants who come into the program at an earlier stage has already exhausted the number of prospective participants. As to the individual participant, therefore, respondents' program must of necessity ultimately collapse when the market for distributors becomes saturated.

Although some participants in respondents' multi-level merchandising program may realize a profit, all participants do not have the potentiality of receiving sums of money equal to or greater than those described in Paragraph Four through recruiting other participants and through finder's fees, commissions, overrides, and other compensation arising out of the sale of respondents' products or the recruitment of other distributors by other participants in the program. As a matter of fact, some participants in the program will receive little or no return on their investment.

For the foregoing reasons, respondents' multi-level merchandising program is organized and operated in such a manner that the realization of profit by any participant contemplates, and is necessarily predicated upon, the exploitation of others who have virtually no

