

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

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
WINN-DIXIE STORES, INC.

MODIFYING ORDER, IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket C-1110. Modified Order, June 24, 1968-Modified Order, Sept. 10, 1975

Order modifying an earlier order dated Sept. 14, 1966, 70 F.T.C. 611, 31 F.R. 13080, modified June 24, 1968, 73 F.T.C. 1056, 33 F.R. 10205, pursuant to order of the United States District Court for the Middle District of Florida, 377 F.Supp. 733, 9 S.&D. 1016, by requiring prior Commission approval of food store acquisitions by respondent only in those States or subdivisions where respondent presently operates such stores or departments.

Appearances

For the Commission: *Mary L. Azcuenaga* and *William M. Sexton*.
For the respondent: *J. Shepard Bryan, Jr.*, Jacksonville, Fla., *Collier, Shannon, Rill & Edwards*, Wash., D.C.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO
CEASE AND DESIST

The Federal Trade Commission, having issued a consent order herein on Sept. 14, 1966, and having modified said consent order on June 24, 1968, and the United States District Court for the Middle District of Florida having enjoined the Commission from failing to reopen the consent order proceeding for the purpose of modifying the order in accordance with the order entered by the Commission against the Kroger Company in F.T.C. Docket No. C-2067; now therefore,

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

It is further ordered That the order issued in this matter on Sept. 14,

1966, as modified on June 24, 1968, be, and it hereby is, modified to read as follows:

It is ordered, That:

(A) For a period of ten (10) years from Sept. 14, 1966, to the extent specified in subparagraphs (B) and (C) below, Winn-Dixie Stores, Inc., shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a nonfood store), where such acquisition involves:

(1) Five (5) or more grocery stores or grocery departments in nonfood stores, or

(2) Annual grocery store or grocery department sales of more than five million dollars (\$5,000,000), or

(3) Combined (Winn-Dixie and the grocery stores or grocery departments to be merged or acquired) grocery store or grocery department sales of more than five percent (5%) of total grocery or food store sales in any city or county in the United States.

(B) The prohibition contained in subparagraph (A) shall apply to any merger or acquisition of grocery stores or grocery departments in nonfood stores located in the following described areas of the United States: The States of Alabama, Florida, Georgia, Kentucky, North Carolina and South Carolina; that portion of the State of Tennessee east of the 86th meridian; that portion of the Commonwealth of Virginia west of the 78th meridian and south of the 38th parallel; the Parish of Concordia in the State of Louisiana and the counties of Adams, Lincoln, Pike and Forrest in the State of Mississippi and those portions of the States of Louisiana and Mississippi south of the 31st parallel; and that portion of Mississippi east of the 89th meridian; and that portion of the State of Indiana south of the 39th parallel.

(C) The prohibition contained in subparagraph (A) shall also apply to any merger or acquisition of grocery stores or grocery departments in nonfood stores located in any city or county in those portions of the United States not described in subparagraph (B), if Winn-Dixie is then operating any grocery stores or grocery departments in nonfood stores in such city or county.

(D) For a period of ten (10) years from Sept. 14, 1966, Winn-Dixie shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store or grocery department in a nonfood store for which prior approval is not required pursuant to subparagraphs (A)-(C) without providing sixty (60) days' prior notification to the Commission, or, when the time schedule does

not permit such notification, without providing a letter to the Commission within ten (10) days after the agreement or understanding in principle is reached, stating that the time schedule does not permit sixty (60) days' prior notification and setting forth the reasons why such prior notification cannot be made; *Provided, however,* That for mergers or acquisitions involving not more than four (4) grocery stores or grocery departments in nonfood stores and representing annual grocery store or grocery department sales of not more than five million dollars (\$5,000,000), notification to the Commission shall be provided within thirty (30) days following the consummation of such merger or acquisition.

It is further ordered, That within (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this order, Winn-Dixie Stores, Inc., shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each person having authority to approve grocery store acquisitions and mergers.

IN THE MATTER OF

NORTH AMERICAN POOLS, INC., ET AL.

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

Docket C-2724. Complaint, Sept. 10, 1975-Decision, Sept. 10, 1975

Consent order requiring a Totowa, N.J., seller, distributor and installer of swimming pools, among other things to cease using unfair and deceptive sales practices including misrepresenting the availability of merchandise; misrepresenting prices; disparaging advertised products; misrepresenting guarantees and product durability.

Appearances

For the Commission: *John A. Crowley* and *Alan F. Rubinstein.*

For the respondents: *Pro se.*

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 North American Pools, Inc., a corporation, and John Maione, individually and as an officer of said corporation, hereinafter sometimes 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 North American Pools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 547 Union Blvd., Totowa, N.J.

Respondent John Maione is an individual and is an officer of North American Pools, Inc. He formulates, directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. His home address is 253 Fifth St., Palisades Park, N.J.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale and distribution of swimming pools and swimming pool accessories.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, the aforementioned swimming pools and swimming pool accessories, when sold, to be shipped from the places of business of their supplier located in the United States to purchasers thereof located in States other than the State from which such shipments originate.

There is now, and has been, at all times mentioned herein a substantial and continuous course of trade in said swimming pools and swimming pool accessories in or affecting 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 products, respondents have made statements and representations with respect thereto in advertisements inserted in newspapers of general interstate circulation, and by advertisements transmitted over television stations located in some States of the United States having sufficient power to carry such broadcasts across State lines, and by oral statements and representations made by respondents, their representatives, agents or employees with respect to the nature and limitations of their offers, their prices, their purchases, savings, and the quality of their products.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

THIS IS IT * * * THIS IS WHAT OWNING YOUR OWN FAMILY POOL IS ALL ABOUT * * * NO BEACH CROWDS, NO TRAFFIC * * * JUST FUN IN THE SUN AND FAMILY TOGETHERNESS. OUR COMPLETE LINE INCLUDES THE

DELUXE LEISURE MATE AND THIS YEAR, IN ADDITION, WE CAN MAKE THIS SPECIAL OFFER * * * THIS 31 FOOT OVAL POOL AND DECK, EXACTLY AS SHOWN IS ONLY \$789 INCLUDING INSTALLATION. THERE ARE NO EXTRAS * * * THE PRICE OF \$789 INCLUDES POOL, PATIO DECK, FILTER, LADDER AND FENCING. SOUNDS UNBELIEVABLE? CALL RIGHT NOW AND LET ONE OF OUR POOL EXPERTS PROVE IT. THERE IS NO OBLIGATION.

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SWIMMING POOL SALE!



HUGE 16' x 31' 539.

OUTSIDE DIMENSIONS
INCLUDES DECK & FENCE
POOL AREA IS 12' x 24' x 3'

COMPLETELY INSTALLED CALL! COMPARE!

**EASY TERMS
ARRANGED**

EXCLUSIVE FEATURES

- Huge 4" Top Rails
- Heavy gauge steel sidewalls
- Exclusive "Lock-Frame" construction
- Heavy Duty Bottom: Rail Foundation
- Heavy gauge vinyl liner
- Safety Lock-up and In-Pool Aluminum Ladders
- Advanced over-the-wall Skimmer
- Cartridge Filtration Unit

SEE THE GREAT SWIMMING VALUE FOR YOUR MONEY IN A FANTASTIC COMBINATION THAT WAITS YOU TO RELAX!

BEAUTY • QUALITY • DURABILITY • SAFETY

Here there is a custom-crafted pool designed for the family budget as well as for their swimming needs. But don't let the low, low price fool you. Included in this fabulous pool package is a handsome 4' x 15' patio deck, big enough for sunning and lounging plus many of the quality features and all of the safety features found in larger sized pools.



CALL DIRECT • CALL COLLECT
OPEN 7 DAYS • 24 HOURS

● NEW JERSEY ● NEW YORK
881-7100 656-8700 NY 667-3600

NORTH AMERICAN POOLS, INC.
547 UNION HILL AVENUE, TOTOWA, NEW JERSEY 07012

* * * Unconditionally guaranteed for 10 years * * * Swimming Pools are maintenance Free * * * Usual Selling Price * * * excess of \$4000 * * * Reduced Prices * * * use of Pools as models or demonstrators.

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import and meaning, but not specifically set out herein, respondents have represented and are now representing, directly or by implication, that:

1. The offers set out in their advertisements are bona fide offers to sell swimming pools of the kind therein described and on the terms and conditions stated.

2. Their advertised offers of a swimming pool for \$489, \$539 or \$789 is a special or sale price and respondents' purchasers or potential purchasers are being offered a price for said pool which would effect a savings amounting to the difference between the special or sale price and some higher price at which such pool is usually and customarily sold.

3. Swimming pools sold by respondents are maintenance free.

4. Some swimming pools sold by respondents are unconditionally guaranteed for a period of ten years.

5. Certain swimming pools sold by respondents are usually sold at prices higher than those offered to potential purchasers and therefore respondents' purchasers are being offered a special or bargain price for said pools which would effect a savings amounting to the difference between the usual and customary price and the price at which the pools are being sold.

6. After the installation of their pool is completed, some purchasers who permit their pools to be used for demonstration and advertising purposes by respondents in selling pools to other persons would receive an allowance or reduction in price.

PAR. 6. In truth and in fact:

1. The offers set out in respondents' advertisements are not bona fide offers to sell swimming pools of the kind therein described at the prices or on the terms and conditions stated but are made for the purpose of obtaining leads to persons interested in purchasing said pools. After obtaining such leads, respondents' salesmen or representatives call upon such persons and disparage respondents' advertised swimming pools and otherwise discourage the purchase thereof and attempt to sell and frequently do sell different and more expensive swimming pools.

2. The advertised swimming pools are not being offered for sale at special or reduced prices and savings are not thereby afforded to purchasers from respondents' usual and customary selling price.

3. The swimming pools sold by respondents are not maintenance free.

4. The swimming pools sold by respondents are not warranted in every respect without conditions or limitations for a period of ten years or any other period of time. Such warranty or guarantee as may be provided is subject to numerous terms, conditions and limitations with respect to the duration of the warranty or guarantee. The purchaser is not informed of the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder until after the installation of the swimming pool.

5. Certain swimming pools sold by respondents have not usually been sold at prices higher than those offered to potential purchasers. Respondents use the stated higher price to mislead potential purchasers into the belief that they are receiving a special or discount price. Respondents do not have a usual and customary selling price for these pools and the prices at which these pools are sold is often substantially below the stated price and varies from purchaser to purchaser depending upon the resistance of the particular purchaser.

6. After the installation of the swimming pool sold by respondents is completed, the purchaser's pool will not, in most instances, be used for demonstration or advertising purposes by respondents. As a result of allowing, or agreeing to allow their pools to be used as demonstrators or models, purchasers are not granted reduced prices or allowances.

Therefore, the statements and representations as set forth in Paragraph Four hereof, were, and are, false, misleading and deceptive.

PAR. 7. In the further course and conduct of their business, and in furtherance of a sales program to induce the purchase of their swimming pools and swimming pool accessories, respondents and their salesmen or representatives have engaged in the following additional unfair, false, misleading and deceptive acts and practices:

In a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four through Six above, respondents or their salesmen or representatives have induced purchasers to sign contracts upon initial contact by not giving the purchaser sufficient time to carefully consider the purchase and consequences thereof.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements were and are true and into the purchase of substantial quantities of respondents' swimming pools and swimming pool accessories by reason of said erroneous and mistaken belief.

PAR. 9. In the course and conduct of their business, and at all times

mentioned herein, respondents have been in substantial competition, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of swimming pools and other products of the same general kind and nature as sold by respondents.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission 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 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent North American Pools, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 547 Union Blvd., Totowa, N.J.

Respondent John Maione is an individual and is an officer of said corporation. He formulates, directs and controls the acts and practices

of said corporation and his address is the same as that of said corporation.

2. 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, North American Pools, Inc., a corporation, its successors and assigns, and its officers, and John Maione, individually and as an officer of the aforesaid corporation and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale, distribution or installation of swimming pools or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising or offering for sale any products for the purpose of obtaining leads or prospects for the sale of different products unless the advertised products are capable of adequately performing the function for which they are offered, and respondents maintain an adequate and readily available stock of said products.

2. Using any advertising, sales plan or procedure involving the use of false, deceptive or misleading statements or representations designed to obtain leads or prospects for the sale of other merchandise.

3. Representing, directly or indirectly, that any products or services are offered for sale when such is not a bona fide offer to sell said products or services.

4. Disparaging, any product, installation or service which is advertised or offered for sale by respondents.

5. Representing, directly or by implication, that any price for a swimming pool or other product or service sold by respondents is a special, pre-season or sale price, when such price does not constitute a significant reduction from an established selling price at which such swimming pool, product or service has been sold in substantial quantities by respondents in the recent, regular course of business.

6. Representing, in any manner, that the swimming pools or any other products sold by respondents are maintenance free or require no periodic servicing or inspection.

7. Representing, directly or indirectly, that any of the respondents' products, installations or services are warranted or guaranteed, unless the nature and extent of the warranty or guarantee, the identity of the warrantor or guarantor and the manner in which the warrantor or guarantor will perform thereunder are clearly and conspicuously

disclosed in immediate conjunction therewith; and unless respondents promptly and fully perform all of their obligations and requirements, directly or impliedly represented under the terms of each such warranty or guarantee.

8. Representing that by purchasing any merchandise, purchasers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such merchandise has been sold or offered for sale at retail in good faith for a reasonably substantial period of time in the recent, regular course of business.

9. Misrepresenting, in any manner, the amount of savings available to purchasers or prospective purchasers of any merchandise sold or offered for sale by respondents.

10. Representing, directly or indirectly, that any price is reduced from respondents' former price if records customarily maintained by respondents fail to establish that such price constitutes a significant reduction from the price at which such merchandise has 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.

11. Misrepresenting, directly or indirectly, that the pool of any of respondents' purchasers or prospective purchasers will be used for any type of advertising, demonstration or model or that as a result of such use, respondents' purchasers or prospective purchasers will be granted reduced prices or will receive a discount on the purchase price of said pool.

12. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, *e.g.*, Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

13. Failing to furnish each buyer, at the time he signs the sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face

type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO *(Name of seller)*, AT *(address of seller's place of business)*, NOT LATER THAN MIDNIGHT OF *(Date)*.

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

14. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

15. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this order including specifically his right to cancel the sale in accordance with the provisions of this order.

