

Order

39 F. T. C.

IN THE MATTER OF
AVERBACH COMPANY, INC. ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3342. Order, October 4, 1944

Modified order in proceeding in question, in which original order issued on September 11, 1939, 29 F. T. C. 879, requiring respondents, their officers, etc., in connection with the offering for sale, etc., of flavoring compounds, foodstuffs, toilet articles and novelties in interstate commerce or in the District of Columbia, to cease and desist from misrepresenting their business status, methods, operation and size, prices, special offers, terms and conditions, agents' opportunities or earnings, value of their products, free goods, and composition and nature of their said products, as in said order in detail below set out.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of respondents in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having duly made and issued its findings as to the facts, conclusion and order to cease and desist dated September 11, 1939; and the Commission having further considered said order to cease and desist and having given due notice to the respondents to show cause why the proceeding should not be reopened for the purpose of modifying said order in the respects and to the extent set out in said notice, and no appearance having been entered by any of the respondents; and the Commission having considered the matter and the record herein, and having concluded that the public interest requires the modification of said order in the respects and to the extent set out in said notice.

It is ordered, That the respondents, Averbach Co., Inc., a corporation, and Maid-O-Best, Inc., a corporation, their officers, agents, servants and employees, G. M. Moses, individually, and his agents, servants and employees, and Esther Averbach, Morris Averbach, and Jerome Averbach, individually, and trading variously under the names The Muriel Co. and American Chemical Co., and their agents, servants and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of flavoring compounds, foodstuffs, toilet articles and novelties in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing by photographs or in any other way that J. M. Gebbart, a fictitious person, or any other fictitious person, is a Director of Sales of Maid-O-Best, Inc.
2. Representing that Maid-O-Best, Inc., has a national sales organization until and unless said Maid-O-Best, Inc., actually has and maintains a

selling organization through and by which sales are made by said Maid-O-Best, Inc., generally throughout the United States.

3. Representing, through the use of the words "Manufactured only by Maid-O-Best, Inc., St. Paul, Minn. U.S.A.," or through the use of any words or terms of similar import and meaning, or through any other means or device or in any manner, that said respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein said products are manufactured by them.

4. Representing as the customary or regular prices or values for respondents' products prices and values which are in fact fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold in the normal course of business.

5. Representing through fictitious prices marked or stamped on or affixed to food flavoring or other products, sold in combination deals or otherwise, or on the containers thereof, or through any other means or device or in any manner, that said prices so marked, stamped or affixed are the regular or customary retail prices of such products.

6. Using the term "vanilla extract" to describe a flavoring product, unless prepared with a vehicle of ethyl alcohol and containing a flavoring content at least fifty percent of which shall consist of true vanilla made from the vanilla bean.

7. Representing that respondents' so-called vanilla extract has no equal for quality, or that it is the finest available at any price, or that it is composed of vanillin, coumarin, caramel color, and a liberal quantity of pure vanilla made from the choicest vanilla beans, unless and until a liberal quantity of pure vanilla, made from vanilla beans, is actually used in the preparation of said alleged extract, the whole suspended or carried in a vehicle of ethyl alcohol.

8. Using the words "orange," "lemon," "maple," and "almond" in combination or connection with the word "extract" until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol.

9. Representing that a special account of \$3,000 or any other amount represented to be used to cover refunds for returned Maid-O-Best products is deposited in the Western State Bank of St. Paul, Minn., or in any other financial institution, until and unless said sum be actually deposited and maintained on deposit in such bank or other financial institution and there kept available in liquid form for the said purpose.

10. Representing that it is easy for agents or representatives to earn up to \$15 or any other sum of money per day in selling respondents' products, unless and until the sum named is a true representation of the average net earnings or profits consistently made by respondent's agents or representatives in the ordinary course of business under normal conditions and circumstances.

11. Designating any so-called food flavors as extracts until and unless they are genuine extracts dissolved and carried in alcoholic solution.

12. Representing that cheap, inferior ingredients contained in flavoring preparations are of "high quality" or "purest and finest."

13. Representing that respondents buy their raw materials in "tremendous quantities," and from representing that greater savings are thereby passed on to the housewives of America, until and unless said statements are true in fact.

14. Representing that the product "Choc-O-Toddy" or any other product is manufactured by the respondents unless and until such respondents actually own or operate, or directly and absolutely control, a manufacturing plant wherein said product is manufactured by them.

15. Representing, designating, or describing articles of merchandise regularly included in a combination offer with other identical, similar, or other articles of merchandise as "free," "included free," or any other term of similar import or meaning.

16. Representing, designating or describing goods, wares or merchandise delivered only upon the condition that some other article or merchandise be purchased and paid for as "free" or in any other manner indicating that said goods, wares or merchandise are gifts or gratuities.

17. Representing that so-called "special offers" or "special deals" are limited to a given period of time or to a given number of persons, if in truth and in fact the prices stated in such offers and deals are the regular, usual, and customary prices at which the products therein mentioned are offered for sale.

18. Using the term "free" or any other term of similar import and meaning to describe, designate or refer to any merchandise which is not a gift or gratuity and delivered to the recipient thereof without cost and unconditionally.

It is further ordered, That the respondents shall, within 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.

Syllabus

IN THE MATTER OF

J. P. RAINEY TRADING AS J. P. RAINEY & COMPANY¹

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4800. Complaint, Aug. 6, 1942—Decision, Oct. 9, 1944

Where an individual engaged in city concerned in the electrical contracting business and in purchasing in said capacity and as agent of a general contractor below referred to, electrical equipment and supplies, including electric cable, wire, switches, conduits, fittings, condulets, potheads, cable heads, transformers, insulators, lighting fixtures, lamps and accessories, from three certain concerns and others, and in competition in making and seeking to make purchases and sales in commerce, with sellers of such products, except insofar as said competition had been restricted or forestalled as below set forth;

Following arrangements by the Navy with a shipbuilding company under which latter was to undertake construction of naval vessels and pursuant to which (1) the Navy agreed to arrange for the advancing of the necessary funds to rehabilitate the latter's shipyards in the city concerned, including office buildings and shipways, to be expended under the general supervision of the Navy and subject to its approval, and (2) said shipbuilding company contracted with the aforesaid general contractor for the reconstruction by him of said office buildings and shipways on a cost-plus-a-fixed-fee basis, with the understanding that, in securing materials or services he would obtain competitive offers from as many as practicable but not less than two—or three where specified—reputable firms and award a contract to the firm quoting the minimum price; bids to be opened by or in the presence of the Supervisor of Shipbuilding of the Navy or his representative, and to be subject to his approval before award of the sub-contract—

Engaged in the general practice of preparing and submitting different and purportedly competitive, but in fact non-competitive, bids and price quotations in the purchase and sale of said products in commerce; and as a part of said practice, in addition to his bid, submitted over his own signature as his proposal to furnish several items of electric wire and cable to said general contractor for aforesaid use, prepared and submitted two additional bids, on stationery bearing the letter-heads, and over names of two of aforesaid three certain concerns, respectively proposing to furnish the same items but at total amounts which exceeded by some \$400 the amount quoted by him in his own bid, and through thus quoting the minimum price received the contract;

With intent and result of deceiving and misleading officials of said shipbuilding company and representatives of the Navy Supervisor of Ships, into believing, considering and approving the aforesaid bids purportedly made by said individual, and aforesaid two concerns, as independent, genuine and competitive bids; and with the effect of depriving buyers and prospective buyers, including contractors and subcontractors with the United States Government, of the benefit of competition in commerce between said individual, the three concerns aforesaid, and others:

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co., at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.