

IN THE MATTER OF

MONTGOMERY WARD & CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8200. Complaint, Dec. 6, 1960—Decision, June 14, 1961*

Consent order requiring a large Chicago mail order retailer, to cease making deceptive price and savings claims for its automobile tires, parts, and accessories, through such practices as setting out as "list prices" in newspaper advertisements, amounts substantially in excess of actual retail prices, and representing the difference between such "list" prices and the advertised sale prices as savings for the buyer.

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 Montgomery Ward & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing 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 Montgomery Ward & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 619 West Chicago Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for some years last past has been, engaged in the advertising, offering for sale and sale of many articles of merchandise, including automobile tires.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, said merchandise, including its automobile tires, when sold, to be shipped from its place of business in Chicago, Illinois to purchasers thereof located in other States of the United States and in the District of Columbia. Respondent also maintains retail stores in various States of the United States, including the States of Maryland and Virginia. Respondent in some instances causes said automobile tires to be shipped from the manufacturer thereof to these retail stores, while in other instances respondent causes said tires to be shipped from its warehouses located in various states to said retail stores located in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said tires in com-

Complaint

58 F.T.C.

merce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid and for the purpose of inducing the purchase of its said tires in commerce, respondent has engaged in the practice of using fictitious retail prices in advertisements published in various newspapers. Among and typical of such practice, but not all inclusive thereof, are the following statements:

Nylon 64 Blackwalls—tubeless			Tube-type	
Size	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax
6.70-15.....	27.10	20.88	25.25	17.88
7.10-15.....	29.50	22.88	27.75	20.88
7.60-15.....	31.95	23.88	29.75	22.28
7.50-14.....	27.10	20.88		
8.00-14.....	29.50	22.88		
			Only \$3.00 more buys a whitewall in your size.	

Air cushion tubeless black			Tube-type—black	
Size	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax	List price each before trade-in plus excise tax	Sale price with trade-in plus excise tax
6.70-15.....	22.15	16.88	19.95	12.88
7.10-15.....	26.95	18.88	23.95	16.48
7.60-15.....	29.95	20.88	26.65	18.88
7.50-14.....	22.15	16.88		
8.00-14.....	26.95	18.88		
			\$3.00 more buys a whitewall in your size.	

PAR. 5. Through the use of the aforesaid statements, and others similar thereto but not included herein, respondent represented, directly or by implication:

1. That the amounts set out under "list prices" were the prices at which the merchandise advertised had been usually and customarily sold at retail by respondent in the recent regular course of business.
2. That purchasers of the tires advertised were afforded savings of the differences between higher "list prices" and the advertised sales prices.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive.

1. The amounts set out under "list prices" were substantially in excess of the prices at which the advertised merchandise had been usually and customarily sold at retail by respondent in the recent regular course of business.

1111

Decision

2. Purchasers of the advertised tires were not afforded savings of the differences between the "list prices" and the advertised sales prices.

PAR. 7. In the conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of automobile tires.

PAR. 8. The use by respondent of the false, misleading and deceptive statements, representations and practices, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial amounts of respondent's automobile tires by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John W. Brookfield, Jr. for the Commission.

Mr. D. L. Dickson of Chicago, Ill., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 6, 1960, the respondent is charged with violating the provisions of the Federal Trade Commission Act.

On April 7, 1961, the respondent entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effects as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only, does not constitute an admission by the respondent that it has violated

Order

58 F.T.C.

the law as alleged in the complaint, and that said complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25 (b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued:

1. Respondent Montgomery Ward & Co., Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 619 West Chicago Avenue, in the City of Chicago, State of Illinois.

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

It is ordered, That respondent Montgomery Ward & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile tires, automotive parts and automotive accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any amount is respondent's usual and customary retail price of said products when such amount is in excess of the price at which said products have been usually and customarily sold at retail by respondent in the recent regular course of its business.

2. Representing, directly or by implication, that any saving is afforded in the purchase of said products unless the price at which they are offered constitutes a reduction from the price at which such products have been usually and customarily sold by respondent in the recent regular course of its business.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondent's said products, or the amount by which the price of said products is reduced from the price at

1111

Complaint

which said products have been regularly and customarily sold by respondent in the recent regular course of business.

4. Using the word "list" in connection with the price of said products unless it is the price at which said products have been usually and customarily sold by respondent in the recent regular course of its business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 14th day of June 1961, become the decision of the Commission; and, accordingly: