

ingly.

*It is ordered*, That 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 the order to cease and desist.

---

IN THE MATTER OF  
THE SCOTT & FETZER COMPANY

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

*Docket 8182. Complaint, Nov. 23, 1960—Decision, July 25, 1961*

Consent order requiring the Cleveland, Ohio, manufacturer of "Kirby" vacuum cleaners to cease using fictitious pricing claims, scare tactics, and other unfair practices to sell its vacuum cleaners; and to cease representing falsely, in newspaper "Want-Ads", through its distributors and otherwise, that salaried positions and guaranteed minimum compensation were available for qualified applicants.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Scott & Fetzer Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Com-

mission 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 The Scott & Fetzer Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1920 West 114th Street, Cleveland, Ohio.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of electric vacuum cleaners, and accessories and attachments therefor. Respondent's vacuum cleaners are marketed under the trade names, among others, of "Kirby Home Sanitation System," "Kirby", and "Kirby System." Respondent markets its "Kirby" vacuum cleaners nationally to the purchasing public through distributors and subdistributors, and salesmen thereof who are sometimes called "dealers". Respondent is one of the largest manufacturers and sellers of electric vacuum cleaners in the industry having total sales for the year 1958 of approximately \$15,891,501.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its "Kirby" electric vacuum cleaners, accessories and attachments, when sold or distributed, to be transported from its factory and place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in such vacuum cleaners, accessories and attachments, in commerce, between and among the various States of the United States.

PAR. 4. In the course and conduct of its business, as herein described, respondent has been for many years in substantial competition in the sale and distribution of its "Kirby" electric vacuum cleaners in commerce between and among the various States of the United States with other corporations, persons, firms and partnerships.

PAR. 5. Respondent's "Kirby" vacuum cleaners are sold primarily to prospective purchasers in their own homes during or after a demonstration accompanied by a sales talk. Respondent's distributors, subdistributors, and "Kirby" salesmen, obtain appointments with such prospective purchasers by various means including personal solicitation and contact with the general public.

Respondent promotes the sale of its "Kirby" vacuum cleaners, and aids and assists its distributors, subdistributors, and "Kirby" salesmen, in selling "Kirbys" by advertising in magazines of national

## Complaint

59 F.T.C.

circulation. Such advertising of respondent urges the "American Home-Maker" to "Welcome your Kirby Man" because:

He brings you an exciting story of a bright clean home without drudgery . . . He's a neighbor of yours, a good citizen of your community, a gentleman who merits your confidence—carefully chosen, trained and tested. When he rings your doorbell or telephone, welcome him. You'll be glad you did!

Respondent directs and assists its distributors, subdistributors, and "Kirby" salesmen, in the sale of "Kirby" vacuum cleaners by instructions, advice, and supervision. Respondent assists distributors and subdistributors in the procurement and training of "Kirby" salesmen. Respondent furnishes sales literature, sales manuals, booklets of advice, and the like to its distributors, subdistributors, and "Kirby" salesmen, for their education, instruction and use in the sale of "Kirby" vacuum cleaners and in meeting the variety of problems arising in the sale of respondent's "Kirby" vacuum cleaners such as, for example, obtaining appointments with prospective purchasers, demonstrating the "Kirby" in the most effective way, meeting objections and closing the sale.

PAR. 6. In selling and attempting to sell its "Kirby" vacuum cleaners respondent, directly and through its distributors, subdistributors, and "Kirby" salesmen, makes many false, misleading and deceptive statements and representations, and employs many unfair and deceptive acts and practices. For the purpose of selling respondent's "Kirby" vacuum cleaners, accessories and attachments, and in the solicitation of appointments with prospective purchasers, respondent, directly and through its distributors, subdistributors, and "Kirby" salesmen, directly or by implication, makes the following typical, but not all inclusive, false, misleading and deceptive statements and representations, and utilizes the following typical, but not all inclusive, unfair and deceptive acts and practices:

(1) Falsely represents in soliciting appointments with prospective purchasers that the appointment is sought only to obtain the prospect's opinion of the "Kirby" and conceals, or attempts to conceal, that the actual purpose for which the appointment is sought is to sell the prospect a "Kirby";

(2) Falsely advises, as a device or stratagem to obtain an appointment in the home of a prospective purchaser, that the prospect has won a "prize" or "gift";

(3) Falsely represents through the use of tickets with fictitious and exaggerated prices thereon, or otherwise, to prospects with whom appointments are sought, or have been made, that the "prize" or "gift" (known as a "door opener") offered or given to such prospects

has a value far in excess of the actual and true value of such "prize" or "gift";

(4) Falsely represents in seeking an appointment in the home of a prospective purchaser, and thereafter during such appointment, that the appointment is sought and the presentation of the "Kirby" is made a part of, or in connection with, an advertising program, or for advertising or survey purposes;

(5) Falsely represents during appointments in the homes of prospective purchasers that the "Kirby" salesman keeping the appointment is an advertising representative, or advertising dealer, or demonstrator, or the like, or a member of the "Kirby" advertising department, and is not a salesman and that he is engaged primarily in the advertising and promotion of "Kirby" vacuum cleaners rather than in the sale of them;

(6) Falsely represents during appointments with prospective purchasers that the "Kirby" representative is there primarily to get such prospective purchaser's opinion of the "Kirby" rather than to sell a "Kirby";

(7) Falsely represents that the purpose of the "Kirby Advertisers Club" referral program, by which purchasers of "Kirby" vacuum cleaners are paid for sending in names of prospects, provided such prospects agree to permit the "Kirby" representative to "demonstrate" a vacuum cleaner to them, is primarily to advertise the "Kirby" and that any resulting sales are incidental to this;

(8) Falsely represents that the prospective purchaser, in whose home an appointment has been made, has been especially "selected" for such appointment;

(9) Employs "scare tactics" by falsely stating or emphasizing (a) that the rugs and mattresses of prospective purchasers are infested with disease causing germs; (b) that the condition of such rugs and mattresses renders them highly dangerous to prospective purchasers and their families; and (c) that the "Kirby" will correct this condition;

(10) Falsely represents that purchasers can pay for the "Kirby" vacuum cleaner by sending in names of other prospective purchasers pursuant to the so-called referral or "Kirby Advertisers Club" plan;

(11) Falsely represents to prospective purchasers that certain stated amounts are the usual and regular selling prices for "Kirby" vacuum cleaners;

(12) Falsely represents to prospective purchasers that they are being granted a special price lower than the usual and regular price of the "Kirby" vacuum cleaner;

## Complaint

59 F.T.C.

(13) Falsely represents that the price at which the "Kirby" vacuum cleaner is offered is available for a limited time only, and that the prospective purchaser must take advantage of it and buy a "Kirby" at that time or forego indefinitely such special price;

(14) Falsely represents to prospective purchasers of "Kirby" vacuum cleaners that they are being offered or granted a special advertising allowance, or special trade-in allowance, or the like, not made available generally to prospective purchasers;

(15) Falsely represents that participation in the "Kirby Advertisers Club" is not offered to every prospective purchaser of a "Kirby", but is limited only to those prospects who have a "wide circle of friends" among whom to advertise the "Kirby";

(16) Falsely represents to prospective purchasers that they are being granted a special price lower than the usual and regular price of a "Kirby" because of an unusual impending circumstance such as the participation of the "Kirby" salesman in a contest, or the like;

(17) Falsely represents that the "Sani-Em-Tor" attachment of the "Kirby" vacuum cleaner is an exclusive feature which other vacuum cleaner firms cannot duplicate because of the patent owned on it by respondent.

PAR. 7. In the course and conduct of its business and for the purpose of attracting and obtaining salesmen of respondent's "Kirby" vacuum cleaners, respondent directly and through its distributors and subdistributors, by means of advertisements inserted in the "Want-Ad" or classified section of newspapers, or otherwise, and other advertising media, falsely represents that salaried positions or jobs, or jobs with a guarantee of minimum earnings or compensation, are available for qualified applicants with respondent's distributors and subdistributors when in truth and in fact the positions or jobs being offered are not salaried, but are jobs selling "Kirbys" which are compensated solely by commissions earned in the sale thereof, and there is no guarantee of minimum earnings or compensation. Typical of such false and misleading advertisements are the following:

(1)

## GROUND FLOOR OPPORTUNITY

National mfg. orders new expansion program opening new jobs in PITTSBURGH, New Kensington, Butler, and McKeesport.

## FREE TRAINING

In new job

SALARY \$387.50

to start per month

132

## Decision

RAPID ADVANCEMENT to profit sharing plan and higher earnings averaging \$510 per month.

Advancement possibilities unlimited. We need in this very first group men with some mechanical skill, willing to work and enthusiasm to learn.

This is very interesting work with entirely new electrical power equipment. Call FA 1-4512 on MONDAY, OCT. 12 ONLY, 10 a.m. to 9 p.m.

(2)

## COLLEGE MEN

Steady work entire summer, commission basis with \$300 monthly guarantee. NO CANVASSING. Must have car. Apply Kirby Co., 16 West North Ave., 10 a.m. to 4 p.m.

PAR. 8. By furnishing sales literature, sales manuals, books of advice, and the like, to its distributors, subdistributors and "Kirby" salesmen, as described in Paragraph Five, respondent places in the hands of such persons means and instrumentalities by and through which they may mislead and deceive members of the public in the respects set out herein.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statements and representations, and the aforesaid unfair and deceptive acts and practices has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were and are true, and by reason of such belief into the purchase of substantial quantities of respondent's vacuum cleaners, and into undertaking the sale of such vacuum cleaners. As a result thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondent from its competitors and substantial injury has thereby been, and is being done to competition in commerce.

PAR. 10. 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 and in violation of Section 5 of the Federal Trade Commission Act.

*Mr. Danied H. Hanscom* supporting the complaint.

*Roudebush, Adrion, Brown, Corlett & Ulrich*, by *Mr. Oscar H. Johnson* and *Mr. Allen N. Corlett* of Cleveland, Ohio, and *Donohue & Kaufmann* by *Mr. Arnold F. Shaw* of Washington, D.C., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On November 23, 1960, the Federal Trade Commission issued a complaint charging that the above-named respondent had used ficti-

## Order

59 F.T.C.

tious pricing, "scare tactics" and numerous other unfair practices to promote the sale of its products.

After issuance and service of the complaint, the above-named respondent, its attorneys and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

By the terms of said agreement, respondent admits the jurisdictional facts alleged in the complaint and agrees that the complaint may be used in construing the terms of the order. The agreement further provides that the order shall have the same force and effect as if entered after a full hearing and 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. It was further agreed that the record herein shall consist solely of the complaint and the agreement, that the order may be altered, modified, or set aside in the manner provided by statute for other orders, and the signing of said agreement was for settlement purposes only and does not constitute an admission by respondent that it violated the law as alleged in the complaint.

Under the terms of said agreement, respondent waives the filing of findings of fact and conclusions of law and any further procedural steps before the hearing examiner and the Commission, and the respondent also waives any right to challenge or contest the validity of the order entered in accordance with the agreement.

The undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

## JURISDICTIONAL FINDINGS

1. The respondent, The Scott & Fetzer Company, is a corporation organized and doing business under the laws of the State of Ohio, with its office and principal place of business located at 1920 West 114th Street, Cleveland, Ohio.

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

## ORDER

*It is ordered*, That respondent, The Scott & Fetzer Company, a corporation, its officers, agents, representatives and employees, di-

rectly, or through distributors of its products, or through any corporate or other device, in connection with the offering for sale, sale, or distribution of vacuum cleaners, accessories, and attachments, or any other merchandise, whether sold under the name "Kirby", "Kirby Home Sanitation System", "Kirby System", or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, when soliciting appointments with prospective purchasers, that the appointment is sought only to obtain the prospect's opinion of the "Kirby", and concealing, or attempting to conceal, that the actual purpose for which the appointment is sought is to sell the prospect a "Kirby".

2. Advising, as a device or stratagem, to obtain an appointment in the home of a prospective purchaser, that the prospect has won a "prize" or "gift".

3. Representing, through the use of tickets with fictitious and exaggerated retail prices thereon, to prospects with whom appointments are sought, or have been made, that the item (known as a "door opener") offered or given to such prospects has a value far in excess of the actual and true retail value of such item.

4. Representing, in seeking an appointment in the home of a prospective purchaser, and thereafter during such appointment, that the appointment is sought and the presentation of the "Kirby" is made as part of or in connection with, an advertising program, when such is not the fact.

5. Representing, during appointments in the homes of prospective purchasers, that the "Kirby" salesman keeping the appointment is an advertising representative, or advertising dealer, or demonstrator, or the like, or a member of the Advertising Department, and is not a salesman, and that he is engaged primarily in the advertising and promotion of "Kirby" vacuum cleaners rather than in the sale of them, when such is not the fact.

6. Representing, during appointments with prospective purchasers, that the "Kirby" representative is there to get such prospective purchaser's opinion of the "Kirby" rather than to sell a "Kirby".

7. Representing that the purpose of the "Kirby Advertisers Club" referral program by which purchasers of "Kirby" vacuum cleaners are paid for sending in names of prospects, provided such prospects agree to permit the "Kirby" representative to "demonstrate" a vacuum cleaner to them, is only to advertise the "Kirby" and that any resulting sales are incidental to this.

8. Representing that the prospective purchaser in whose home an appointment has been made has been "selected" for such appointment, when such is not the fact.

9. Stating or emphasizing that the rugs and mattresses in prospective purchasers' homes are disease causing and are highly dangerous to prospective purchasers and their families and that "Kirby" will correct this condition.

10. Representing that purchasers can earn all or a large part of the purchase price of the "Kirby" vacuum cleaner by sending in names of other prospective purchasers pursuant to the so-called referral or "Kirby Advertisers Club" plan, when such is not the fact.

11. Representing to prospective purchasers that any amount is the usual and regular price for the "Kirby" when it is in excess of the price at which said product is usually and regularly sold in the regular course of business. Respondent is not precluded, however, from representing that a trade-in allowance is deducted from its regular price, if such is the fact.

12. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being granted a special price lower than the usual and regular price of "Kirby" vacuum cleaners, accessories and attachments, when such is not the fact.

13. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being granted a special price lower than the usual and regular price of "Kirby" vacuum cleaners, accessories and attachments, that such special price is available for a limited time only, and that the prospective purchaser must take advantage of it and buy a "Kirby" at that time or forego indefinitely such special price, when such is not the fact.

14. Representing to prospective purchasers of "Kirby" vacuum cleaners that they are being offered or granted a special advertising allowance, or special trade-in allowance, or the like, not made available generally to prospective purchasers, and that the usual and regular price of the "Kirby" is being reduced by the amount of such special allowance, when such is not the fact.

15. Representing that participation in the "Kirby Advertisers Club" is not offered to every prospective purchaser of a "Kirby" but is limited only to those prospects who have a "wide circle of friends" among whom to advertise the "Kirby", when such is not the fact.

16. Representing to prospective purchasers that they are being granted a special price lower than the usual and regular price of a "Kirby" because of an unusual impending circumstance such as the

132

## Complaint

participation of the "Kirby" salesman in a contest, or the like, when such is not the fact.

17. Representing that the "Sani-Em-Tor" attachment, as such, of the "Kirby" vacuum cleaner is patented.

18. Representing, by means of advertisements in newspapers, or other advertising media, or otherwise, that salaries, positions or jobs, or jobs with a guarantee of minimum earnings or compensation are available for qualified applicants with distributors and subdistributors in truth and in fact qualified applicants for such jobs or positions are offered a salary, or a guarantee of minimum earnings or compensation.

## 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 25th day of July 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondent herein 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 the order to cease and desist.

---