
IN THE MATTER OF
ALTHEIMER & BAER, INC., ET AL.

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

Docket C-210. Complaint, Sept. 5, 1962—Decision, Sept. 5, 1962

Consent order requiring Chicago distributors of a variety of merchandise to cease supplying their retail dealers with advertising material and other printed matter which misrepresented the availability, quantity, composition, prices, guarantees, and other features of their said products, as in the order below more specifically set out.

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 Altheimer & Baer,

Inc., a corporation, and Milton L. Altheimer, individually and as an officer of said corporation, and Lewis J. Solomon, individually and as Advertising Manager of said corporation, 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 Altheimer & Baer, Inc., is a corporation organized, 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 404 North Wells Street, Chicago, Ill.

Respondent Milton L. Altheimer is an officer of the corporate respondent. Respondent Lewis J. Solomon is Advertising Manager of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of various articles of merchandise such as dishes, tableware, sheets, towels, watches and fishing equipment, to retailers for resale to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from various States to purchasers thereof located in States other than the State in which the shipment originated, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, for the purpose of inducing the sale of their merchandise, have engaged in the practice of supplying their retail dealers with advertising material and other printed matter containing various statements and representations of which the following are typical, but not all inclusive:

\$39.95 While Stocks Last
While Limited Quantities Last
Quantities Limited
118 Pieces of . . . tools . . . Plus bonus gift of 11 Piece Ensemble
Included FREE . . . 11 Piece Handy Tool Ensemble
No—Not \$29.95, No—\$24.95, Yes Only \$17.88
Never Before Yes—Never Before at This Sale Price \$22.95
Never Before at This Low Low-Price
10 Year Factory Guarantee . . . Factory Guaranteed

Complaint

61 F.T.C.

Chrome Vanadium Alloy Steel . . . Alloy Steel
Hydromatic Dishwasher . . . Its Completely Automatic

PAR. 5. Through the use of the aforesaid practices respondents have represented, and have placed in the hands of retailers the means and instrumentalities of representing, directly or by implication, that:

1. Certain offers of merchandise must be accepted at once or within a limited time.

2. The supply or quantity of certain articles of merchandise is limited.

3. The tool set advertised at \$39.95 contains 118 pieces of tools and that an 11-piece tool ensemble will be given "free" with this set, that is, as a gift or gratuity without cost to the purchaser.

4. Certain prices, set out in juxtaposition with a lower price, are the generally prevailing prices at which the designated merchandise is sold at retail in the trade area or areas where the representations are made.

5. The prices at which certain merchandise is being offered for sale are special prices which are lower than the generally prevailing prices at which said merchandise is sold at retail in the trade area or areas where the representations are made.

6. Certain merchandise is unconditionally guaranteed for a definite period of time.

7. The wrenches and tools in the set offered at \$39.95 are all made of chrome vanadium alloy steel, and the 11-piece set of $\frac{3}{8}$ " drive socket wrenches included therein is made of alloy steel.

8. Certain dishwashers offered for sale are completely automatic.

PAR. 6. In truth and in fact:

1. Said offers of merchandise need not be accepted at once or within a limited time.

2. The supply or quantity of said articles of merchandise is not limited. Adequate quantities are available.

3. The tool set advertised at \$39.95 does not contain 118 pieces of tools and purchasers of this set do not receive an 11-piece tool ensemble free or without cost because the price charged for the merchandise purchased includes the price of the said ensemble.

4. The prices set out in juxtaposition with a lower price are not the generally prevailing prices at which the merchandise is sold at retail in the trade area or areas where the representations are made.

5. The prices at which said merchandise is being offered for sale are not special prices and are not lower than the generally prevailing prices at which the merchandise is sold at retail in the trade area or areas where the representations are made.

6. Respondents' merchandise is not unconditionally guaranteed for any definite period of time and the advertising does not disclose the nature and terms of the guarantee or in what manner the guarantor will perform.

7. The wrenches and tools in the set offered at \$39.95 are not all made of chrome vanadium alloy steel, and the 11-piece set of $\frac{3}{8}$ " drive socket wrenches, included therein, is not made of alloy steel. The latter set, and other wrenches and tools in the set, are made of carbon steel and not chrome vanadium or alloy steel.

8. Said dishwashers are not completely automatic since they have no timing device that will automatically activate and shut off all cycles of operation.

Therefore, the statements and representations referred to in paragraphs 4 and 5 were and are false, misleading and deceptive.

PAR. 7. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

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 said statements and representations were and are true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice of the public and respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint

to issue herein, 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Altheimer & Baer, Inc., is a corporation organized, 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 404 North Wells Street, in the city of Chicago, State of Illinois.

Respondent Milton L. Altheimer is an officer of said corporation. Respondent Lewis J. Solomon is Advertising Manager of said corporation. Their 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 Altheimer & Baer, Inc., a corporation, and its officers, and Milton L. Altheimer, individually and as an officer of said corporation, and Lewis J. Solomon, individually and as Advertising Manager of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or indirectly, that:

1. Offers of merchandise must be accepted at once, or within a limited time, when there is, in fact, no specific time limitation.

2. The supply or quantity of any merchandise is limited when adequate quantities are available.

3. Tool sets or other assemblages of merchandise contain a greater number of pieces or components than is a fact.

4. Merchandise is given free or without charge in connection with the purchase of other merchandise when the price charged for the merchandise purchased includes the price of the so-called free merchandise.

5. Any amount is the usual and customary retail price of merchandise when it is in excess of the generally prevailing price or prices at which the merchandise is sold at retail in the trade area or areas where the representation is made.

6. Any price is a "sale" or special price unless such price constitutes a reduction from the generally prevailing price or prices at which the merchandise is sold at retail in the trade area or areas where the representation is made.

7. Any merchandise is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

8. Any tool or wrench made of carbon steel is made of chrome vanadium alloy steel or other alloy steel.

9. Any machine or device is automatic or completely automatic unless it contains mechanisms or features whereby all operations of the machine or device are completed without the intervention of the operator after the machine or device has been activated.

B. Misrepresenting in any manner the composition, quantity, quality, usual price, availability or performance of any product.

C. Furnishing or otherwise placing in the hands of distributors or dealers in said products the means and instrumentalities by and through which they may mislead or deceive the public in the manner or as to the things hereinabove prohibited.

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.