

IN THE MATTER OF
THE GARLAND COMPANY ET AL.

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

Docket 8302. Complaint, Mar. 3, 1961—Decision, Sept. 12, 1962

Order requiring Cleveland manufacturers of paint which they sold under a variety of brand names, to cease making such deceptive offers in advertising as "Buy A Gallon—Get A Gallon Free" and ". . . factory to you merchandising", when in fact the advertised price was the usual retail selling price for two gallons; and making use on labels on their paints of names of various non-existent companies to designate the manufacturer.

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 The Garland Com-

pany, a corporation, and Juliette F. Harris, John Wise, John H. Harris and Edward F. Wise, individually and as officers 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 as follows:

PARAGRAPH 1. Respondent The Garland Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3748 East 91st Street, Cleveland, Ohio. Individual respondents Juliette F. Harris, John Wise, John H. Harris and Edward F. Wise are officers of the corporate respondent. Individual respondents formulate, direct and control the acts and practices of the corporate respondent. 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 manufacture and sale of paint and related products to retailers for resale to the public. Said sales are made chiefly through their sales division, Merit Paint and Varnish Company, an unincorporated sales division of respondents' business organization. Respondents also lease and operate the paint departments in two department stores: one in Pittsburgh, Pennsylvania and one in Cleveland, Ohio. Respondents' said paint is sold by them under various labels and brand names, including but not limited to Bobbi Brite, Supercote, Van Dyke, Wonderama, Sally Simpson, Lady Ann, Molly Madison, Manor, Estate and Mary Kay.

PAR. 3. In the course and conduct of their business, respondents ship, and have shipped, their said paint from their said place of business in the State of Ohio to retailers and purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said paint in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, hereinbefore described, and for the purpose of inducing the purchase of said paint, respondents advertise said paint, and also assist, instruct, furnish advertising mats and material to, and, in other ways, aid and cooperate with various retailers in the advertising of said paint in newspapers and periodicals of general circulation. Among and typical, but not all inclusive, of the statements contained in such advertisements are the following:

Complaint

61 F.T.C.

FREE PAINT OFFER
 BUY A GALLON
 GET A GALLON
 FREE!

EXTREME Hiding and Covering Power
 Savings through our cooperative buying
 and factory to you merchandising.
 The quality of 68 years of paint
 manufacturing.
 2 Gallons 6.90

* * * * *

LADY ANN PAINT

Buy A Gallon—Get A Gallon Free

Buy A Quart—Get A Quart Free

RUBBER BASE	FLOOR AND PORCH PAINT
WALL PAINT	SALE
SALE	2 gal. 6.98
2 GAL. 6.65	
Semi-Gloss for	HOUSE PAINT
WALLS and	LINSEED OIL BASE
WOODWORK	SALE 2 gal. 6.98
SALE	
2 gal. 6.90	
BASEMENT AND	SALE
MASONRY PAINT	2 gal. 6.98

PAR. 5. Through the use of said advertisements and others similar thereto, not specifically set out herein, respondents represented, directly or by implication, that the usual and customary retail price of each gallon can of the respondents' paint is the price designated in the advertisement, that this advertised price is a factory price, and that if one gallon can of said paint is purchased at the advertised price,

a second gallon can will be given free, that is, as a gift or gratuity without cost to the retail purchaser.

By such acts and practices and by the furnishing of advertising mats, and other advertising material, to retailers, as set forth in paragraph 4, respondents place in the hands of retailers means and instrumentalities by and through which they may deceive and mislead the purchasing public as to the usual and customary retail prices of said paint.

PAR. 6. The aforesaid advertisements referred to in paragraph 4 were false, misleading and deceptive. In truth and in fact, the usual and customary retail price of each gallon can of respondents' paint was not the price designated in the advertisements but was substantially less than such price. The advertised prices were not the prices charged by the factory for said paint but were substantially in excess thereof. The second can of paint was not free, that is, was not a gift or gratuity, and was not given without cost to the retail purchaser, since the purchaser paid the advertised price which was the usual and regular selling price for two gallon cans of respondents' paint.

PAR. 7. In the conduct of their business, respondents on labels attached to the paints, manufactured, sold and distributed by them, make use of various names to designate the manufacturer of said paints. Among and typical, but not all inclusive, of said names are National Paint Specialty Company, Midwest Manufacturing Company, Bobbi Brite Paint Company, Lewis Paint Company, Van Dyke Paint Company, Windsor Paint Company and Wonder Paint Company.

The use of fictitious names on labels as aforesaid, to designate the manufacturer of the paint upon which the said labels appear, has the tendency and capacity to mislead and deceive purchasers of respondents' paint as to the true manufacturer of said paint.

PAR. 8. In the conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, individuals and firms engaged in the sale of paint and related products of the said general kind and nature as that sold by respondents.

PAR. 9. 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 are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a result thereof, substantial trade in commerce

has been unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson supporting the complaint.

Daus, Schwenger & Kottler, by *Mr. Lloyd S. Schwenger* of Cleveland, Ohio, for respondents.

INITIAL DECISION BY WILLIAM K. JACKSON, HEARING EXAMINER

This proceeding was commenced by the issuance of a complaint on March 3, 1961, charging the respondents with unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act in the sale and distribution of paint by: (a) using deceptive "free" claims to promote the sale of their products and (b) using fictitious names on paint labels to designate the manufacturer. By answer filed May 1, 1961, respondents admitted certain of the allegations of the complaint, but denied that any of their actions constituted violations of the Act. Thereafter, on March 8, 1962, the parties entered into a stipulation which by order of the hearing examiner dated April 2, 1962, was accepted and received in evidence and constitutes the official record of this proceeding. Proposed findings of fact and conclusions of law were submitted by both parties.

Consideration has been given to the proposed findings of fact and conclusions of law submitted, and all proposed findings of fact not hereinafter specifically adopted are rejected. Based upon the entire record, the hearing examiner makes the following findings as to the facts, conclusions drawn therefrom and order.

FINDINGS OF FACT

1. Respondent The Garland Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 3748 East 91st Street, Cleveland, Ohio. Individual respondents Juliette F. Harris, John Wise, John H. Harris and Edward F. Wise are officers of the corporate respondent. Individual respondents formulate, direct

and control the acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. Respondents are now and for some time last past have been engaged in the manufacture and sale of paint and related products to retailers for resale to the public. Said sales are made chiefly through their sales division, Merit Paint and Varnish Company, an unincorporated sales division of respondents' business organization. Respondents also lease and operate the paint departments in two department stores; one in Pittsburgh, Pennsylvania and one in Cleveland, Ohio. Respondents' said paint is sold by them under various labels and brand names, including but not limited to Bobbi Brite, Supercote, Van Dyke, Wonderama, Sally Simpson, Lady Ann, Molly Madison, Manor, Estate and Mary Kay.

3. In the course and conduct of their business, respondents ship, and have shipped, their said paint from their said place of business in the State of Ohio to retailers and purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said paint in commerce, as "commerce" is defined in the Federal Trade Commission Act.

4. In the course and conduct of their business, hereinbefore described, and for the purpose of inducing the purchase of said paint, respondents advertise said paint, and have also assisted, instructed and furnished advertising mats and material to, and, in other ways, aided and cooperated with various retailers in the advertising of said paint in newspapers and periodicals of general circulation. Among and typical, but not all inclusive, of the statements contained in such advertisements are the following:

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61 F.T.C.

FREE PAINT OFFER
 BUY A GALLON
 GET A GALLON
 FREE!

EXTREME Hiding and Covering Power
 Savings through our cooperative buying
 and factory to you merchandising.
 The quality of 68 years of paint
 manufacturing.
 2 Gallons 6.90

LADY ANN PAINT

Buy A Gallon—Get A Gallon Free

Buy A Quart—Get A Quart Free

RUBBER BASE WALL PAINT SALE 2 GAL. 6.65	FLOOR AND PORCH PAINT SALE 2 gal. 6.98
Semi-Gloss for WALLS and WOODWORK SALE 2 gal. 6.90	HOUSE PAINT LINDSEED OIL BASE SALE 2 gal. 6.98
BASEMENT AND MASONRY PAINT	SALE 2 gal. 6.98

5. Through the use of said advertisements and others similar thereto, not specifically set out herein, respondents represented, directly or by implication, that the usual and customary retail price of each gallon can of the respondents' paint is the price designated in the advertisement, that this advertised price is a factory price, and that if one gallon can of said paint is purchased at the advertised price, a second gallon can will be given free, that is, as a gift or gratuity without cost to the retail purchaser.

6. The aforesaid advertisements referred to in Paragraph Four were false, misleading and deceptive. In truth and in fact, the usual and customary retail price of each gallon can of respondents' paint was not the price designated in the advertisements but was substantially less than such price. The advertised prices were not the prices charged by the factory for said paint but were substantially in excess thereof. The second can of paint was not free, that is, was not a gift or gratuity, and was not given without cost to the retail purchaser, since the purchaser paid the advertised price which was the usual and regular selling price for two gallon cans of respondents' paint.

7. In the conduct of their business, respondents on labels attached to the paints, manufactured, sold and distributed by them, make use of various names to designate the manufacturer of said paints. Among and typical, but not all inclusive, of said names are National Paint Specialty Company, Midwest Manufacturing Company, Bobbi Brite Paint Company, Lewis Paint Company, Van Dyke Paint Company, Windsor Paint Company and Wonder Paint Company. In truth and in fact, these companies are nonexistent, and the products so designated are manufactured by respondents.

8. In the conduct of their business, at all times mentioned herein, respondents have been, and are now, in substantial competition, in commerce, with corporations, individuals and firms engaged in the sale of paint and related products of the same general kind and nature as that sold by respondents.

CONCLUSIONS

1. By the acts and practices as set forth herein and by the furnishing of advertising and of advertising mats, and other advertising material, to retailers, as set forth in Finding No. 4, respondents place and have placed in the hands of retailers means and instrumentalities by and through which they may deceive and mislead the purchasing public as to the usual and customary retail prices of respondents' paint.

2. The use of fictitious names on respondents' paint labels as set forth in Finding No. 7, to designate the manufacturer of the paint upon which the said labels appear, has the tendency and capacity to mislead and deceive purchasers of respondents' paint as to the manufacturer of said paint.

3. 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

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quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been and is being unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

4. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act. *Matter of Ohmlac Paint & Refining Co., Inc., et al.*, Docket No. 8081, Decision of the Commission, February 23, 1962 [60 F.T.C. 419].

5. The Federal Trade Commission has jurisdiction of and over respondents and the subject matter of this proceeding.

6. The complaint herein states a cause of action, and this proceeding is in the public interest.

ORDER

It is ordered, That respondents, The Garland Company, a corporation, and its officers, and Juliette F. Harris, John Wise, John H. Harris and Edward F. Wise, individually and as officers 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of paint or any other product, do forthwith cease and desist from:

1. Representing directly or by implication:
 - (a) That any merchandise is sold or offered for sale at factory prices when such is not the fact.
 - (b) That any amount is respondents' customary and usual retail price of any merchandise when said amount is in excess of the price at which such merchandise is customarily and usually sold by respondents, at retail, in the recent and regular course of business.
 - (c) That any article of merchandise is being given free or as a gift or without cost or charge, when such is not the fact.
2. Using a fictitious name to designate the manufacturer of their merchandise.
3. Engaging in any practice or plan which will provide retailers of their merchandise with the means or instrumentalities of misrepresenting the usual and regular retail prices of such merchandise.

FINAL ORDER

The Commission by its previous order having placed this case on its docket for review; and

The Commission now having concluded that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed June 29, 1962, be, and it hereby is, adopted as the decision of the Commission.

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 the order to cease and desist.

By the Commission. Commissioner Elman not participating.