

FAIRBANKS WARD INDUSTRIES, INC., ET AL.

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

Docket C-244. Complaint, Sept. 28, 1962—Decision, Sept. 28, 1962

Consent order requiring Chicago distributors to cease supplying retail dealers selling their merchandise with advertising mats to be published over the retailers' names which misrepresented the usual prices, availability, source, quality, etc., of their merchandise, as in the order below indicated.

Complaint

61 F.T.C.

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 Fairbanks Ward Industries, Inc., a corporation, and Michael Wolfson and Harry Zaidler, 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 in that respect as follows:

PARAGRAPH 1. Respondent Fairbanks Ward Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 666 North Lake Shore Drive in the city of Chicago, State of Illinois.

Respondents Michael Wolfson and Harry Zaidler are officers 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 business of promoting the sale of and causing to be distributed various merchandise to retailers.

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 to purchasers thereof located in states other than the state in which said merchandise is, or had been, manufactured or in which the respondents purchased the same. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents compose or cause to be composed, advertising promoting the sale of their said merchandise which advertising they cause to be made into mats, which mats are furnished by them to retail dealers selling their merchandise. Respondents induce the said retail dealers to publish the said advertising composed by them over the retail dealer's name. The respondents, in their said advertising mats and their forms of advertising furnished to and used by their said retail dealers, make many statements of which the following are typical but not all inclusive:

873

Complaint

Now . . Half Price
 11 Piece Lifetime Guaranteed
 CAST ALUMINUM
 Cook Set . . .

Special Mill Purchase Saves You $\frac{1}{2}$

5 in 1 Gossip Desk
 Not \$39.50—Not \$29.50—
 NOW at a Big Saving!
 \$19.98

NOW FOR THE FIRST TIME! 2 SETS FOR THE
 PRICE OF 1
 INCLUDED at no Extra Cost
 ALL-PURPOSE HEAVY-DUTY
 80 Watt SOLDERING IRON KIT

One Year Guarantee

Lifetime Guaranteed

Included Free
 Of Extra Cost

2 Full Years of Eastman
 Kodachrome Color Film Processing Free

Lowest Price Ever
 None Sold Dealers

Only One Set to a Customer

Royal Swedana	All 102 Pieces
Genuine Import	Not \$59.50 Not \$39.50 But
Stainless Steel	\$19.98 None Sold to Dealers

Complete	Chrome	SOCKET WRENCH and TOOL SET
113	Alloy	
Pieces	Steel	Precision Made by Master
		Craftsmen

Not \$99 . . Not \$79 . . Not \$59, BUT
 \$39.98. None Sold to Dealers.

PAR. 5. Through the use of the above said statements and representations, and others of similar import but not specifically set out herein, respondents have represented, directly or by implication, that:

1. Respondents' merchandise is being offered for sale at a reduced price by which the purchasing public can effect a substantial saving.

2. 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.

Complaint

61 F.T.C.

3. 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.

4. Respondents are offering two sets of certain merchandise for the usual price of one of the sets of said merchandise.

5. Only a limited quantity of certain merchandise is available and because of the scarcity of the same, purchasers must order immediately to obtain the said merchandise.

6. Certain goods and services are a gift or gratuity given without cost to the recipient.

7. Respondents' stainless steel flatware is imported from Sweden.

8. The wrenches and tools in the set depicted are all manufactured of chrome alloy steel.

9. The merchandise offered for sale is unconditionally guaranteed for a certain specified period or a lifetime.

PAR. 6. In truth and in fact:

1. The merchandise is not being offered for sale at a reduced price through which the purchasing public can effect a substantial saving.

2. 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.

3. 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.

4. Two sets of merchandise are not being offered for the usual price of one set of merchandise.

5. The supply or quantity of the advertised merchandise is not limited. Adequate quantities are available, and prospective purchasers need not place their orders immediately to obtain the said merchandise.

6. The goods and services represented as being free are not a gift or gratuity, or without cost to the recipient. In some cases, the recipient is required to purchase other merchandise as a prerequisite to receiving and retaining the article represented as being free, and this prerequisite is not clearly and conspicuously disclosed in close conjunction with the representation that the article is free. In other cases, the price which the recipient pays for the other merchandise, the purchase of which is prerequisite to receiving and retaining the article or service represented as being free, exceeds the usual selling price for said merchandise by an amount which includes a charge for the article or service which is represented as being free.

7. The merchandise represented as being imported from Sweden is imported from Japan.

8. Not all of the wrenches and tools represented as being of chrome alloy steel are made of that material. Substantial numbers of the wrenches and tools in the set are made of carbon steel and not of chrome or other alloy steel.

9. Respondents' guarantees of merchandise are subject to limitations and conditions which are not revealed in their advertising of said guarantees.

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

PAR. 7. The respondents by and through the use of the aforesaid acts and practices place in the hands of retailers the means and instrumentalities whereby said retailers may mislead and deceive the public in the manner herein alleged.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals likewise engaged in the sale of like and similar merchandise.

PAR. 9. The use by the 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 respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. 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(a)(1) 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 re-

spondents 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 Fairbanks Ward Industries, 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 666 North Lake Shore Drive, in the city of Chicago, State of Illinois.

Respondents Michael Wolfson and Harry Zaidler are officers of said corporation and 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, Fairbanks Ward Industries, Inc., a corporation, and its officers, and Michael Wolfson and Harry Zaidler, individually and as officers of said corporate respondent, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the promotion or offering for sale, sale or distribution of any 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. Any amount is the usual and customary retail price of respondents' merchandise when such amount is in excess of the price at which respondents' merchandise is usually and customarily sold at retail.

2. 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.

3. 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.

Decision and Order

4. Two sets of any merchandise are being offered for the usual price of one set, unless the sales price for the two sets is respondents' usual and customary retail price for the single set in the recent, regular course of their business.

5. The supply of merchandise offered for sale by respondents is limited, when adequate quantities are available.

6. Offers of merchandise must be accepted at once or within a limited time.

7. Merchandise or service is free or is given as a gift or gratuity without cost to the recipient (a) when all the conditions, obligations, or other prerequisites to the receipt and retention of the free merchandise or service are not clearly and conspicuously disclosed at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or (b) when the respondents' price for the article required to be purchased in order to obtain the merchandise or service represented to be free exceeds the usual price of said article by an amount which includes a charge for the merchandise or service represented to be free.

8. The country of origin of merchandise is any other than that in which the merchandise was produced.

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

10. Any merchandise offered for sale 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.

B. Misrepresenting, directly or indirectly, the composition, quality, usual price, or availability of their merchandise.

C. Misrepresenting in any manner the savings available to purchasers of respondents' merchandise or the amount by which the price of merchandise has been reduced from the price at which it is customarily sold by respondents or their competitors in the usual course of business in the trade area or areas where the representations are made.

D. Furnishing or otherwise placing in the hands of retailers, or others, 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

