

Complaint

IN THE MATTER OF

UNIFORMS BY GILSON, INC., ET AL.

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

Docket C-495. Complaint, May 3, 1963—Decision, May 3, 1963

Consent order requiring Hempstead, Long Island, N.Y., distributors of uniforms, many of them by direct sale through their "Gilson Representative(s)" to whom they furnished a sales kit consisting of their catalog, swatch book and other sales material, to cease representing falsely in such catalogs and other advertising material and through their dealers that the "complete satisfaction" of the purchasing public was guaranteed "without any conditions whatsoever", and that their merchandise was unconditionally guaranteed, when in fact, their said representatives in many instances retained or misappropriated the full amount of the purchase price along with orders and failed to transmit to them orders received along with deposits, and in such cases respondents refused to deliver merchandise without additional payment and to refund deposits; and to disclose clearly to purchasers all of the terms and limitations, etc., under which their merchandise was offered for sale, including a statement as to any financial or other responsibility assumed by them.

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 Uniforms by Gilson, Inc., a corporation, and Louis K. Gilson and Stanley Gilson, individually and as officers of said corporation, and Arthur E. Marchetta, individually and as the sales 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 Uniforms by Gilson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 160 Hempstead Turnpike, Hempstead, Long Island, State of New York.

Respondents Louis K. Gilson and Stanley Gilson are officers of the corporate respondent. Respondent Arthur E. Marchetta is the sales manager of the corporate respondent. The individual respondents 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.

Complaint

62 F.T.C.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of uniforms for sale 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 product, when sold, to be shipped from their place of business in the State of New York to 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 product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, respondents sell and distribute substantial quantities of their uniforms to the public by direct sales through sales persons whom they describe and characterize in their said catalog as "GILSON REPRESENTATIVE(S)" and to whom respondents furnish a sales kit usually consisting of respondents' catalog, swatch book and other sales material employed by respondents to promote the sale of their uniforms.

Respondents' said catalog contains complete descriptions of respondents' uniforms and other products offered for sale, including a detailed photographic representation of respondents' garments worn by what appear to be live models in many instances. Each and every item therein is described with respect to workmanship, fabric, size range, colors, deposit, and selling price. Respondents' swatch book contains representative textile samples supplementing the catalog description which are prominently described as "GILSON'S MIRACLE FABRICS". Respondents' catalog, and other sales materials by way of initial contact advertising employed by the respondents to promote the sale of their uniforms, fails to disclose the extent by which the respondents have imposed conditions, restrictions and limitations upon the apparent authority of said "GILSON REPRESENTATIVE(S)" to accept payment for respondents' products or the terms and conditions imposed on the purchasing public with respect to refunds of deposits paid to said "GILSON REPRESENTATIVE(S)" for the purchase of respondents' products.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their uniforms, the respondents in their catalogs and other advertising material and through their dealers have made numerous statements and representations of which the following are typical but not all inclusive:

A *Gilson* customer is a Guaranteed Customer!

Your satisfaction is unconditionally guaranteed.

COMPLETE, ABSOLUTE SATISFACTION! GILSON GUARANTEES

your complete satisfaction without any conditions whatsoever.—

YOUR GILSON REPRESENTATIVE IS MOST PLEASED TO SERVE YOU.
Gilson * * * the famous name in uniforms!

PAR. 6. By and through the use of the aforesaid statements and others of similar import but not specifically set out herein, respondents represented, directly or by implication:

1. That the "complete satisfaction" of the purchasing public is guaranteed "without any conditions whatsoever."

2. That respondents' merchandise is unconditionally guaranteed.

PAR. 7. In truth and in fact:

1. The "complete satisfaction" of the purchasing public is not "guaranteed without any conditions whatsoever" for the following reasons:

a. In many instances, respondents' representatives retain or misappropriate the full amount of the purchase price along with orders given to them by members of the purchasing public for the purchase of respondents' uniforms. In those instances, where the full amount of the purchase price is prepaid to the "GILSON REPRESENTATIVE" so as to take advantage of respondents' advertised policy of prepaying all delivery charges, which the purchaser would otherwise be obliged to pay in the event that a C.O.D. balance were involved, and the "GILSON REPRESENTATIVE" thereafter fails to remit the necessary proceeds to the respondents, the respondents fail and refuse to deliver the merchandise so ordered and paid for unless an amount equivalent to 50% of the catalog price of the merchandise so ordered is remitted directly to the respondents by the purchaser in addition to the monies already expended by the purchaser for said purchase.

b. Respondents' representatives fail and neglect to transmit to respondents the orders given to them by members of the purchasing public in conjunction with deposits given to them for the purchase of respondents' uniforms. In those instances, where the "GILSON REPRESENTATIVE" has received the amount of the deposit specified by respondents' catalog for the particular purchase and the "GILSON REPRESENTATIVE" fails or neglects to forward such order to the respondents, the respondents refuse to make a refund of said deposit, and the purchaser then has no other alternative except being obliged by respondents to apply the amount so deposited with the "GILSON REPRESENTATIVE" exclusively as a credit towards the purchase of respondents' merchandise. In such instances purchasers usually do not learn of the omission of the "GILSON REPRESENTATIVE(S)" to transmit such orders and respondents' policies in the above respects until after a considerable delay in the

receipt of the ordered merchandise has intervened, during which interval the purchasers often have been obliged to fill their uniform requirements promptly from sources other than the respondents. In such cases, nevertheless, respondents insist that persons who have made deposits in the manner aforesaid, can only recover the expenditure of such funds by applying the amount thereof solely and exclusively toward the purchase of respondents' merchandise, irrespective of the extent of the delay and inconvenience resulting from the failure of the purchaser to receive such merchandise and the necessity for the purchaser to obtain and pay for other merchandise to fill his immediate uniform needs which the respondents had failed to meet at the time.

2. The respondents' merchandise is not unconditionally guaranteed for the following reasons:

a. The respondents have failed to make clear and conspicuous disclosure in their catalog and other sales literature of the material fact that their purported unconditional and absolute guarantee of satisfaction is in fact, conditional, qualified and limited.

b. Respondents' sales program is further false and deceptive because it fails to make clear and conspicuous disclosure of the material facts respecting the exact nature and extent of their limited liability in transactions involving persons purporting to represent them.

c. The purported guarantee is limited by respondents to the replacement of uniforms or other garments which might be found unsatisfactory by the purchaser after delivery solely because of reasons of size, color or other inherent features of the merchandise itself with respect to material or workmanship, and which must be returned to the respondents for such adjustment only within a specified number of days after receipt of delivery by the purchaser.

Therefore, the statements and representations referred to in Paragraphs 5 and 6 are false, misleading and deceptive.

PAR. 8. By the aforesaid practices, respondents place in the hands of dealers and other persons calling on the purchasing public, means and instrumentalities by and through which they may mislead the public as to the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor.

PAR. 9. 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 uniforms of the same general kind and nature as that sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and

1263

Decision and Order

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' product by reason of said erroneous and mistaken belief.

PAR. 11. 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 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 Uniforms by Gilson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 160 Hempstead Turnpike, Hempstead, Long Island, State of New York.

Respondents Louis K. Gilson and Stanley Gilson are officers of said corporation and respondent Arthur E. Marchetta is sales 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 Uniforms by Gilson, Inc., a corporation, and its officers, and Louis K. Gilson and Stanley Gilson, individually and as officers of said corporation, and Arthur E. Marchetta, individually and as sales manager of the aforesaid corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of uniforms or other products, 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 of respondents' products are guaranteed or that the satisfaction of purchasers of respondents' products is guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

2. Representing that any product is guaranteed or the satisfaction of purchasers of respondents' products is guaranteed when any charge in addition to the advertised selling price is imposed as a condition to delivery unless there is clearly and conspicuously set forth in immediate conjunction therewith, any and all of the terms and conditions thereof.

3. Failing to disclose clearly and conspicuously to prospective purchasers and purchasers of respondents' merchandise, any and all of the terms, conditions, restrictions or limitations under which respondents' merchandise is offered for sale including a statement as to any limited financial or other responsibility assumed by respondents.

4. Placing in the hands of dealers or other persons calling on the purchasing public, means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any merchandise in the respects set out in 1, 2 and 3 above.

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.

Opinion

IN THE MATTER OF

COLGATE-PALMOLIVE COMPANY AND TED BATES &
COMPANY, INC.

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

Docket 7736. Complaint, Jan. 8, 1960—Decision, May 7, 1963

Final Order, following remand from the Court of Appeals, First Circuit, dated November 20, 1962, 310 F. 2d 89, 7 S.&D. 574, cease and desist order dated December 29, 1961, 59 F.T.C. 1452, requiring respondent and its advertising agency Ted Bates & Company, Inc., to cease using deceptive television demonstrations and misrepresenting the qualities of shaving cream.

OPINION OF THE COMMISSION ON REMAND

FEBRUARY 18, 1963

By ELMAN, *Commissioner*:

This case is again before the Commission, on remand from the Court of Appeals for the First Circuit.

On December 29, 1961, the Commission, finding that Colgate-Palmolive Company and its advertising agency, Ted Bates & Company, Inc., had violated Section 5 of the Federal Trade Commission Act, issued a cease and desist order against them. The Commission found that respondents, in numerous television commercials advertising the moisturizing qualities of Colgate's Rapid Shave cream, engaged in two distinct unfair and unlawful practices and methods of competition: (1) misrepresenting the qualities or merits of the product; and (2) using a sham demonstration purporting to prove a claim made for the product but which, because of the undisclosed substitution of a mock-up, did not in fact prove the claim. Our order was designed to prohibit respondents from continuing to engage in both of these illegal forms of advertising.

As to the first practice prohibited by the Commission's order, i.e., misrepresentation of the qualities of shaving cream products, the Court of Appeals in its opinion of November 20, 1962, sustained the Commission's decision, apparently in all respects. However, with respect to the second practice, i.e., the use of spurious television commercial demonstrations, the Court found the apparent reach of our order to be ambiguous. On the basis of an interpretation of the order it believed to be supported by our previous opinion and by certain statements made by Commission counsel during the oral argument of the appeal, the Court held that the order was permeated by "funda-