

savings are available to purchasers of such diamonds, or misrepresenting, in any manner, directly or by implication, any savings available to purchasers of such diamonds.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

O. K. RUBBER WELDERS, INC., ET AL.

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

*Docket 8571. Complaint, May 15, 1963—Decision, June 19, 1964 **

Consent order requiring a Littleton, Colo., corporation engaged in the manufacture, leasing, and sale of tire recapping and repairing machinery and supplies and in the sale of tires under its own brand name (O.K.), and a major tire manufacturer headquartered in Akron, Ohio, to cease entering into or continuing any agreement between O.K. and its dealers whereby the dealers would promote the sale of products of any supplier which O.K. has a sales commission agreement, and to cease preventing or attempting to prevent any O.K. dealer from exercising his independent choice of tires he wishes to handle in addition to products sold by the respondent.

*Order granting leave to reopen consent order negotiations page 1312 herein.

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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 parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

PAR. 1. Respondent O. K. Rubber Welders, Inc., hereinafter referred to as "O.K.", is a corporation organized under the laws of Colorado with its principal office and place of business located at 551 Rio Grande Avenue, Littleton, Colorado. O.K. is a successor to O. K. Rubber, Inc., and O. K. KO-OP Rubber Welding System in carrying on a business established some 25 years ago.

PAR. 2. Respondent, The B. F. Goodrich Company, hereinafter referred to as "Goodrich", is a corporation organized under the laws of New York with its principal office and place of business located at 500 South Main Street, Akron, Ohio.

PAR. 3. Respondent O.K. is engaged in the manufacture, leasing and sale of tire recapping and repairing machinery and supplies, and in the sale of new tires under O.K.'s own private brand, all of which are hereinafter referred to as "O.K. products." O.K. promotes, leases and sells the aforesaid O.K. products to independent tire repair dealers, hereinafter referred to as "O.K. dealers," who also sell new tires and do tire recapping and repairing. These O.K. dealers have entered into written contracts with O.K., designated as Operator's Auto Float Franchises, under which an O.K. dealer is granted an exclusive right to operate a tire repair store under O.K. trade marks, trade names, O.K. advertising, merchandising, and related service programs in a specified territory. The O.K. dealers, numbering over 1,000 and located in various states of the United States, comprise the largest organization of franchised independent tire repair dealers in the United States. O.K.'s sales to these dealers for the year ended June 30, 1960, were more than eight million dollars.

PAR. 4. Respondent Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner tubes. Goodrich sells its various products directly to the consuming public through more than 500 company-owned and operated retail outlets, and to other retailers and wholesalers having

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places of business located in the various states of the United States. Its total sales in 1960 were more than seven hundred million dollars.

PAR. 5. In the course and conduct of their business, respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, or cause them to be shipped, from the states in which said products are manufactured or warehoused to purchasers thereof located in other states of the United States.

PAR. 6. In the course and conduct of their said business in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms, except to the extent that such competition has been restrained, lessened or eliminated by the unlawful acts and practices hereinafter alleged.

PAR. 7. Goodrich sells new tires directly and through wholesalers to many classes of customers, including tire repair dealers who purchase for resale to consumers for replacement use on their automobiles. Tire repair dealers, by the nature of their business, are particularly well adapted to be outlets for the sale of new tires to the consuming public. They constitute a large and increasingly important market for new tires.

PAR. 8. In connection with Goodrich's sales of tires in commerce, it has entered into a contract with O.K. whereby O.K. agrees to promote the sale of Goodrich tires, for which Goodrich pays O.K. a commission, ranging from 5% to 10%. Respondent O.K., in various ways, persuades, influences, and causes its O.K. dealers to purchase said Goodrich tires. O.K. dealers have agreed between and among themselves and with respondent O.K. to approve the contract between Goodrich and O.K. Said O.K. dealers do not receive any part of the commission paid by Goodrich to O.K. on these sales.

Said O.K. dealers are independently-owned and would be operated as independent business enterprises were it not for the unlawful acts and practices of respondents, as hereinafter set forth.

Respondent O.K.'s control of the O.K. dealers is inherent in the types of leases, mortgages, options and other agreements between them, as well as the Operator's Auto Float Franchise, and in the action by O.K. in enforcing these agreements by various acts and practices, including surveillance of the dealers' compliance coupled with termination or threats of termination of the dealer's franchise where the dealer refuses or fails to carry out or cooperate with respondent O.K. in the promotion and sale of Goodrich tires. The dealer is aware that such termination can result in great financial loss and irreparable

harm, such as the loss of his business, customer goodwill, sales and profit.

By virtue of these circumstances, O.K. is in a position to influence and control the purchasing and marketing activities of said O.K. dealers. Such influence and control have been and are now exercised by O.K. over its O.K. dealers in such a manner as to cause them to purchase substantial quantities of tires from Goodrich, the seller designated by O.K.

PAR. 9. By virtue of said contract between Goodrich and O.K., Goodrich has sold and is now selling substantial quantities of tires in commerce to said O.K. dealers. In the year ended June 30, 1960, O.K. received \$364,357 in commissions from Goodrich under this contract.

PAR. 10. Among the effects of the adoption by respondents of the said sales commission contract under the circumstances and in the matter hereinabove alleged are the following:

1. Foreclosed a large and substantial amount of business to manufacturers, wholesalers and other distributors who compete with Goodrich in the sale of tires.
2. Increased substantially the amount of tire business done by Goodrich.
3. Prevented a substantial number of independent tire repair dealers from obtaining commissions and other price savings they otherwise would have received in the absence of such an arrangement.
4. Deprived a substantial number of tire repair dealers of their right to act as independent businessmen by denying them freedom of choice as to the tires which they may purchase and stock for resale.
5. Deprived the consuming public of the opportunity to purchase tires from competitors of Goodrich and such other advantages as would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

PAR. 11. The acts and practices of respondents, as alleged above are all to the prejudice of the public, have a dangerous tendency to and have actually hindered, suppressed, lessened and eliminated competition in the sale and distribution of tires, and constitute an unfair method of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued a complaint on May 15, 1963 charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

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Decision and Order

The Commission having duly determined upon motion thereafter filed that in the circumstances presented the public interest would be served by waiver here of the provision of Section 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; 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, 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, makes the following jurisdictional findings, and enters the following order:

1. Respondent O.K. Rubber Welders, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Colorado with its office and principal place of business located at 551 Rio Grande Avenue, Littleton, Colorado.

Respondent The B. F. Goodrich Company is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 500 South Main Street, Akron, Ohio.

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

ORDER

I

It is ordered, That respondent O.K. Rubber Welders, Inc., a corporation, its officers, representatives, agents, employees, subsidiaries, successors and assigns, directly or through any corporate or other device, in connection with the promotion, offering for sale, sale or distribution of tires, tire repair or recapping machinery or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Entering into or continuing any agreement between or among respondent O.K. and any O.K. dealers whereby such dealers are obligated to handle, or commit themselves to handle, products which are sponsored, recommended, promoted or approved by said respondent pursuant to a sales commission arrangement between respondent O.K. and any supplier.

2. Entering into or continuing any condition, agreement, or understanding in connection with any lease, mortgage, option, franchise, loan or other agreement with any O.K. dealer, that such dealer shall distribute any products which are sponsored, recommended, promoted or approved by said respondent O.K. pursuant to a sales commission arrangement between respondent O.K. and any supplier, or that such O.K. dealer not handle products of any competitor of a supplier with which respondent O.K. may have a sales commission arrangement.

3. Entering into or continuing any agreement or understanding with any present or prospective O.K. dealer or imposing any condition upon any such dealer which interferes with the independent choice of such dealer as to the products he will handle in addition to the products sold by respondent O.K.

4. Refusing to enter into, discontinuing or threatening to discontinue any lease, mortgage, franchise, loan, or other agreement or exercising or threatening to exercise any option with any O.K. dealer, in whole or in part, because such dealer refuses to handle products which are sponsored, recommended, promoted or approved by said respondent O.K. pursuant to a sales commission arrangement between respondent O.K. and any supplier, or because such dealer handles products of any competitor of a supplier with which respondent O.K. may have a sales commission arrangement, or in any way interfering with any right of the dealer to independently decide as to any such products he may desire to handle.

5. Intimidating or coercing or attempting to intimidate or coerce any O.K. dealer to purchase any particular brand of tires or other products.

6. Preventing or attempting to prevent any O.K. dealer from exercising his own independent choice in purchasing, reselling, merchandising, or displaying tires or other products he will handle in addition to the products sold by respondent O.K.

7. Offering to sell or lease, or selling or leasing, tire recapping or repairing machinery or related equipment to any person conditioned upon an agreement or understanding that such person shall purchase any other product from O.K. or from any source designated by O.K.

8. Employing any method of inspecting, reporting, or surveillance of, O.K. dealers' purchases for the purpose or with the effect of enforcing O.K.'s recommendation to handle any sponsored product.

9. Cooperating or agreeing to cooperate in any way with any manufacturer or supplier of tires or other products, by any of the foregoing acts or practices, to prevent or attempt to prevent any O.K. dealer from stocking or selling any product in addition to the products sold by respondent O.K.

10. Exercising any option to repurchase any equipment prior to the termination of the O.K. franchise to any dealer. Any such termination of a franchise shall not be inconsistent with, or in violation of, any of the terms of this order. This proscription shall not prevent an agreement of sale wherein the O.K. dealer promises to relinquish such machinery to O.K. upon default in payment, so long as such agreement provides that the purchaser may accelerate payment for such machinery.

II

It is further ordered, That within ninety (90) days of the effective date of this order, respondent O. K. Rubber Welders, Inc., shall amend any present, and thereafter incorporate into any future lease, mortgage, option, franchise, loan or other written agreement with any O.K. dealer a condition assuring such dealer that under such agreement he is not required to purchase any product sponsored, recommended, promoted or approved by said respondent pursuant to a sales commission arrangement between O.K. and any supplier.

III

It is further ordered, That within sixty (60) days of the effective date of this order, respondent O. K. Rubber Welders, Inc., shall:

1. Inform all O.K. dealers by certified or registered mail, return receipt requested that they are not under any restriction, requirement, restraint or limitation to handle or sell products sponsored, recommended, promoted or approved by said respondent pursuant to a sales commission arrangement between O.K. and any supplier.

2. Serve by certified or registered mail, return receipt requested, upon each O.K. dealer a true copy of this order, and thereafter deliver the same to each person who becomes an O.K. dealer at the time of his affiliation with respondent O.K.

3. Collect and thereafter keep a file of each such return receipt provided for in paragraphs 1 and 2 above so long as such dealer continues to be affiliated with O.K. and for a period of not less than five (5) years thereafter.

4. Furnish all present O.K. officers, agents, representatives and employees, having business dealings or contacts with O.K. dealers,

and hereafter, at time of employment or affiliation, all such subsequent officers, agents, representatives and employees of O.K. with the information and order specified in paragraphs 1 and 2 above, and obtain a written receipt therefor from each such individual and keep a file thereof so long as such person is an employee or representative of O.K. and for five (5) years thereafter.

IV

It is further ordered, That respondent B. F. Goodrich shall:

1. Within sixty (60) days after entry of this order, serve upon any B. F. Goodrich officer, employee, agent or representative having business dealings or contacts with respondent O.K. or O.K. dealers, a true copy of this order and require that each such officer, employee, agent or representative, during the continuance in effect of any sales commission arrangement with respondent O.K., upon learning or having reason to believe that respondent O.K. may have violated or may be violating the order against it, shall forthwith notify in writing the Secretary of B. F. Goodrich thereof at the Company's offices in Akron, Ohio. Upon receipt of any such notice the Secretary of B. F. Goodrich shall promptly, in writing, notify respondent O.K.'s chief executive officer, setting forth all information known concerning the asserted violation; if within sixty (60) days of the mailing of such notification respondent O.K. fails to advise respondent B. F. Goodrich in writing that it has investigated all the circumstances, giving its assurances either that the asserted violation did not in fact occur or that it has eliminated any such violation, then respondent B. F. Goodrich shall promptly advise the Federal Trade Commission of all information known to it pertinent to such asserted violation.

2. Cease and desist from cooperating or agreeing to cooperate in any way with respondent O.K. to interfere, by any of the means prohibited in this order, with the independent choice of any O.K. dealer as to the products which he will handle in addition to the products sold by respondent O.K.

V

It is further ordered, That respondent O. K. Rubber Welders, Inc., 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 provisions of Parts I and III of this order.

It is further ordered, That respondent O. K. Rubber Welders, Inc., shall, within ninety (90) days after service upon it of this order,

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file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the provisions of Part II of this Order.

It is further ordered, That respondent The B. F. Goodrich Company 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 provisions of Part IV of this order.
