

requirements of Section 2(d) of the Clayton Act, as amended, as interpreted in the accompanying opinion.

IN THE MATTER OF
GENERAL MOTORS CORPORATION ET AL.

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

Docket C-795. Complaint, July 27, 1964—Decision, July 27, 1964

Consent order requiring the manufacturer of "Frigidaire" washing machines, its advertising agency, and a company engaged in conducting tests of materials and commodities for manufacturers, to cease representing falsely—as was done in radio and television broadcasts and in advertising circulars—that Frigidaire washers were superior in overall performance to

*In the following related cases: Chesebrough-Ponds, Inc., Docket No. 8491; Union Carbide Corporation, Docket No. 8492; Becton, Dickinson & Company, Docket No. 8493; Warner-Lambert Pharmaceutical Company, Docket No. 8494; Julius Schmid, Inc., Docket No. 8495; The Mennen Company, Docket No. 8496; Eversharp, Inc., Docket No. 8497; Sterling Drug, Inc., Docket No. 8498; Corn Products Company, Docket No. 8499; White Laboratories, Inc., Docket No. 8500; Chemway Corporation, Docket No. 8502; The d-Con Company, Inc., Docket No. 8503; Hazel Bishop, Inc., Docket No. 8504; Philip Morris, Incorporated, Docket No. 8505; Lehn & Fink Products Corporation, Docket No. 8506; B. T. Babbitt, Inc., Docket No. 8507; Youngs Rubber Corporation, Docket No. 8508.

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washers produced by five other leading manufacturers in washing ability, amount of lint removed, water use, and cost of operations through its misleading testing claims.

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 General Motors Corporation, Dancer-Fitzgerald-Sample, Inc., and United States Testing Company, Inc., corporations, hereinafter referred to as respondents, have violated the provisions of the 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 General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3044 West Grand Boulevard, Detroit 2, Michigan.

Respondent Dancer-Fitzgerald-Sample, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 347 Madison Avenue, New York 17, New York.

Respondent United States Testing Company, 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 1415 Park Avenue, Hoboken, New Jersey.

PAR. 2. Respondent General Motors Corporation is now, and for some time last past has been, engaged in the manufacture, advertising, offering for sale, sale and distribution of washing machines designated "Frigidaire Washer" and various other products to distributors and to retailers for resale to the public.

Respondent Dancer-Fitzgerald-Sample, Inc., is now, and for some time last past has been, an advertising agency representing respondent General Motors Corporation, and prepares and places, and for some time last past has prepared and placed, for publication advertising material, including radio and television commercials, but not limited to that hereinafter set forth, to promote the sale of the aforesaid "Frigidaire Washer" and other products.

Respondent United States Testing Company, Inc., is now, and for some time last past has been, a company engaged in conducting tests of materials and commodities for manufacturing and merchandising

concerns engaged in advertising, offering for sale, selling and distributing to the purchasing public such tested articles, including the aforesaid "Frigidaire Washer."

PAR. 3. In the course and conduct of its business, respondent General Motors Corporation now causes, and for some time last past has caused, its said "Frigidaire Washer," when sold, to be shipped from its factories or plants in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has 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 conduct of its business, at all times mentioned herein, respondent General Motors Corporation has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of washing machines.

In the conduct of its business, at all times mentioned herein, respondent Dancer-Fitzgerald-Samples, Inc., has been in substantial competition, in commerce, with corporations, firms and individuals in the advertising business.

In the conduct of its business, at all times mentioned herein, respondent United States Testing Company, Inc., has been in substantial competition, in commerce, with corporations, firms, and individuals in the testing of materials and commodities.

PAR. 5. For the purpose of inducing the sale of Frigidaire Washers, respondent General Motors Corporation engaged United States Testing Company, Inc., to conduct tests comparing Frigidaire Washers with the washing machines of competing manufacturers. These tests were paid for by respondent General Motors Corporation. Respondent General Motors Corporation, with the aid and participation of respondent Dancer-Fitzgerald-Sample, Inc., has caused the publication and circulation of advertisements for Frigidaire Washers utilizing the results of the aforesaid tests. These advertisements have been used in radio and television broadcasts of interstate transmission and have appeared in advertising circulars of general circulation in various States of the United States.

Typical of said advertisements, but not all inclusive, is the following:

Say, if you need a new washing machine * * * and all the claims and sales talk have you confused * * * let me give you some solid facts about which machine *is* or *isn't* the best buy. No fooling. Here's the straight story from the United States Testing Company * * * the world's *largest* independent testing laboratory. Listen: And I quote—THE FRIGIDAIRE AUTOMATIC WASHER IS RATED NO. 1 FOR ALL-AROUND PER-

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FORMANCE BY U.S. TESTING CO., INC. THE FRIGIDAIRE WASHER *PROVED BEST* OF 6 LEADING AUTOMATIC WASHERS IN CONTROLLED LABORATORY TESTS CONSIDERING THE FOLLOWING POINTS: WASHING ABILITY, AMOUNT OF LINT FORMED AND REMOVED, DRYNESS OF SPIN, AUTOMATIC CARE OF MAN-MADE WASH'N WEAR GARMENTS, SIMPLICITY OF USE AND FLEXIBILITY, AMOUNT OF WATER USE, WASHING TIME, AND COST OF OPERATION. Report number 57745, dated May 21, 1959. Un-quote! Impressive, huh? Well that's the 1960 Frigidaire automatic washer. Rated #1 * * * *your best buy!* So why fool with any other washer? See your Frigidaire dealer, real soon.

PAR. 6. Through the use of advertisements described in Paragraph Five, respondents have represented that the aforesaid tests established that Frigidaire washers on the market are superior in over-all performance to washers on the market produced by five other leading manufacturers.

PAR. 7. In truth and in fact, the aforesaid tests did not establish that the Frigidaire washers on the market are superior in overall performance to washers on the market made by other manufacturers because they did not provide a fair or accurate comparison of the performance of Frigidaire washers with those manufactured by competitors.

PAR. 8. The advertisements described in Paragraph Five also had the tendency to deceive consumers into believing that the aforesaid tests established that Frigidaire washers were superior to the washers produced by five other leading manufacturers with respect to each of the points listed in the advertisements, *i.e.*, washing ability, amount of lint formed and removed, dryness of spin, automatic care of man-made wash'n wear garments, simplicity of use and flexibility, amount of water use, washing time and cost of operation.

PAR. 9. In truth and in fact, on the basis of the tests performed the Frigidaire washers did not rank first in each of the aforesaid test categories.

PAR. 10. The advertisements described in Paragraph Five had the tendency to mislead purchasers into believing that the tests were independently designed by United States Testing Company, Inc.

PAR. 11. In truth and in fact such tests were not independently designed by United States Testing Company, Inc.

PAR. 12. By furnishing to General Motors Corporation the results of said tests, respondent United States Testing Company, Inc., has provided the means and instrumentality whereby the public has been misled in the manner described above.

PAR. 13. 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 respondent's products by reason of said erroneous and mistaken belief.

PAR. 14. 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, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order.

1. Respondent General Motors Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 3044 West Grand Boulevard, Detroit 2, Michigan.

Respondent Dancer-Fitzgerald-Sample, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of

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the State of Delaware, with its principal office and place of business located at 347 Madison Avenue, New York 17, New York.

Respondent United States Testing Company, 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 1415 Park Avenue, Hoboken, New Jersey.

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

PART I

It is ordered. That respondent General Motors Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of washing machines or any other household appliance 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 product has been tested, either alone or in comparison with other products, and that such test proves or supports a claim as to the performance of such product, unless such representations clearly and accurately reflect the test results and unless the tests themselves are so devised and conducted as to constitute a creditable basis for any such representation. This paragraph shall not prohibit any advertisement which does not reasonably imply that a test had been made. References in advertising or promotional material to standards or certifications promulgated, generally recognized and used by the industry as a basis for measuring or testing the performance characteristics of household appliances, such as those standards promulgated by NEMA and other recognized trade associations, where such references merely claim that an appliance will perform in a stated fashion when measured in accordance with a specified NEMA or other recognized standard, will not constitute a violation of this paragraph as long as the household appliance performs in accordance with such advertised claim. The use in sales promotion or advertising of references to results of tests by wholly independent, disinterested and non-commercial testing agencies, such as Consumers Union or Underwriters Laboratories, will not violate this paragraph so

long as the representation involved fairly and accurately reflects the published results of the tests.

2. Making any representations of the type described in Paragraph 1 above where the products upon which the tests are made are not representative, with respect to the factors tested, of such products advertised, offered for sale or sold to members of the purchasing public by the respective manufacturers of the products tested.

3. Failing to disclose clearly and conspicuously, in conjunction with any over-all performance test results claimed for a product, each performance characteristic of the product, a test of which serves as a basis for such claim, and the relative position of the advertised product in the test of each such performance characteristic.

4. Failing to reveal clearly and conspicuously, in conjunction with any representations concerning tests of any product, that the testing methods or procedures were not independently and finally determined by the testing agency, if such is the fact. This paragraph of the order will not apply to tests conducted by wholly independent, disinterested, non-commercial testing agencies, such as Consumers Union or Underwriters Laboratories.

PART II

It is ordered, That respondent Dancer-Fitzgerald-Sample, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising of washing machines or any Frigidaire household appliance 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 product has been tested, either alone or in comparison with other products, and that such test proves or supports a claim as to the performance of such product, unless such representations clearly and accurately reflect the test results and unless respondent, if it did not participate in the tests, requires a written test report from those making the tests, and the tests themselves as reflected in such report or as participated in by respondent, as the case may be, constitute a creditable basis for any such representation; provided that this paragraph shall not prohibit any advertisement which does not reasonably imply that a test had been made. References in advertising or promotional material to standards or certifications promulgated, generally recognized and used by

the industry as a basis for measuring or testing the performance characteristics of household appliances, such as those standards promulgated by NEMA and other recognized trade associations, where such references merely claim that an appliance will perform in a stated fashion when measured in accordance with a specified NEMA or other recognized standard, will not constitute a violation of this paragraph as long as the household appliance performs in accordance with such advertised claim. The use in sales promotion or advertising of references to results of tests by wholly independent, disinterested and non-commercial testing agencies, such as Consumers Union or Underwriters Laboratories, will not violate this paragraph so long as the representation involved fairly and accurately reflects the published results of the tests.

2. Making any representations of the type described in Paragraph 1 above where the products upon which the tests are made are not representative, with respect to the factors tested, of such products advertised, offered for sale or sold to members of the purchasing public by respondent and by the manufacturers of the other products tested; provided that respondent shall not be in violation of this paragraph if it acts in good faith upon a written certification, signed by the testing agency or the manufacturer or seller, that the products tested are representative, with respect to the factors tested, of such products advertised, offered for sale or sold to members of the purchasing public by the respective manufacturers of the products tested.

3. Failing to disclose clearly and conspicuously, in conjunction with any over-all performance test results claimed for a product, each performance characteristic of the product, a test of which serves as a basis for such claim, and the relative position of the advertised product in the test of each such performance characteristic.

4. Failing to reveal clearly and conspicuously in conjunction with any representations concerning tests of any product that the testing methods or procedures were not independently and finally determined by the testing agency, if such is the fact. This paragraph of the order will not apply to tests conducted by wholly independent, disinterested, noncommercial testing agencies, such as Consumers Union or Underwriters Laboratories.

PART III

It is further ordered, That respondent United States Testing Company, Inc., a corporation, and its officers, agents, representatives and

employees, directly or through any corporate or other device, in connection with the conducting of tests of any washing machines or any other household appliance and the furnishing of reports of such tests to any manufacturer or seller of such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing any reports of any tests that prove or purport to prove or support a claim as to the performance of such product, either alone or in comparison with other products, with knowledge or reason to know that such test reports or any information contained therein will be used by such manufacturer or seller to advertise any of such products, unless such reports clearly and accurately reflect the test methods and test results and unless the tests themselves are so devised and conducted as to constitute a creditable basis for the test results or for any representation in the report of the quality or merits of the product tested.

2. Authorizing or approving any advertisement referring to or based upon any report of the type described in Paragraph 1 above of any test or tests made by respondent of any such product, unless such report clearly and accurately reflects the test methods and test results and unless the tests themselves are so devised and conducted as to constitute a creditable basis for the test results, or for any representation in such report, or for any representation in any such advertisement of the quality or merits of the product tested and included in such report; provided that this paragraph shall not apply to any advertisement that does not reasonably imply that a test had been made.

3. Authorizing or approving any advertisement referring to or based upon any report of the type described in Paragraph 1 above of any test or tests made by respondent of any such product which advertisement fails to disclose clearly and conspicuously in conjunction with any over-all performance test results claimed for such product each performance characteristic, a test of which serves as a basis for such claim, and the relative position of the advertised product in the test of each such performance characteristic.

4. Authorizing or approving any advertisement referring to or based upon any report of the type described in Paragraph 1 above of any test or tests made by respondent of any such product which advertisement fails to reveal clearly and conspicuously, in conjunction with any representations concerning tests made by respondent of any product, that the testing methods or procedures

were not independently and finally determined by the testing agency, if such is the fact.

5. Authorizing or approving any advertisement referring to or based upon any report of the type described in Paragraph 1 above of any test or tests made by respondent of any such product:

(a) Without having obtained from the manufacturer or seller for whom such tests are made a certification that the product or products, which are supplied or furnished by such manufacturer or seller and upon which the tests are made, are representative with respect to the factors tested, of such products to be advertised or being advertised or to be offered for sale or being offered for sale, or to be sold or being sold, to members of the purchasing public by such manufacturer or seller and by the manufacturers or sellers of any other products tested, and

(b) with knowledge or reason to know, as to those products that are not supplied or furnished by such manufacturer or seller, that the product or products upon which the tests are made are not representative, with respect to the factors tested, of such products as are being advertised, or are being offered for sale or being sold to members of the purchasing public at the time that the products tested are obtained.

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.

IN THE MATTER OF

MONROE AUTO EQUIPMENT COMPANY

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a)
OF THE CLAYTON ACT