
IN THE MATTER OF
GIANT FOOD INC.

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

Docket 7773. Complaint, Feb. 4, 1960—Decision, Aug. 5, 1964

Order modifying desist order of July 31, 1962, 61 F.T.C. 326, to make it conform with the language of the Commission's Revised Guides Against Deceptive Pricing.

ORDER MAKING FINAL MODIFICATIONS OF ORDER TO CEASE AND DESIST

On June 23, 1964 [65 F.T.C. 1315], the Commission issued a notice of its intention to modify the cease and desist order in the above-captioned matter. The Commission afforded respondent an opportunity to submit

any comments, argument or statement of views with respect to the proposed modifications. On July 17, 1964, respondent submitted a document entitled "exceptions and opposition to order reopening proceeding and proposing modification of order to cease and desist" and an accompanying "motion for hearing." The Commission has considered each of these documents as well as the answer filed by complaint counsel and has concluded that its proposed modification of the order should be made final.

The Commission stated in its June 23 order that despite its general rule of not expressly modifying outstanding cease and desist orders to make them conform with the language of its revised **Guides Against Deceptive Pricing**, it would do so in this case because of respondent's possible reliance upon certain statements contained in a letter from the Commission. The modified order that the Commission proposed on June 23 constitutes a substantial relaxation of the requirements of the order now outstanding against respondent. The Commission has nonetheless given full consideration to the respondent's various objections to such a modification of the order.

Respondent contends, first, that the proposed modification differs in some of its terms from the order that it has urged upon the Commission on several occasions subsequent to the adoption of the revised Guides. The Commission, however, has heretofore clearly informed respondent that it has made no commitment whatever to enter a modified order in the particular form requested by respondent.

Respondent further contends that the Commission's proposed modification "constitutes a substantial enlargement of the order which is now outstanding," "proscribes activity and conduct which are not typified by or cognate to the conduct and activity which were the subject of the proceeding," and is inconsistent with the revised Guides. Respondent has not advised the Commission of its specific reasons for believing the Commission's order to be subject to these objections or indicated the particular portions of the order to which the objections are intended to apply. Despite the lack of such assistance from respondent, the Commission has re-examined its proposed modifications and concluded that they correctly adapt the principles of the revised Guides to the types of unlawful conduct in which respondent engaged.

In the Commission's view no purpose would be served by affording respondent a further opportunity to argue its objections to the proposed modifications. The provision in the Commission's previous order that respondent might submit whatever comments, argument or statement of views it desired has fully satisfied the requirements of Section 5(b) of the Federal Trade Commission Act for "notice and oppor-

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tunity for hearing." *Cf. Federal Communications Commission v. WJR, The Goodwill Station*, 337 U.S. 265 (1949). In view of the substantial public interest in this proceeding, the Commission concludes that the standards of conduct to which respondent will be expected to adhere should be clearly and definitely established without further delay. Accordingly,

It is ordered by the Commission, That respondent's motion for hearing be, and it hereby is, denied.

It is further ordered, That the order to cease and desist heretofore entered in this proceeding be, and it hereby is, modified to provide as follows:

It is ordered, That respondent GIANT FOOD INC., a Delaware corporation, and its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of household electrical appliances, kitchen utensils, or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "regular price" or words of similar import to refer to any amount which is in excess of the price at which such merchandise has been sold or offered for sale in good faith by the respondent for a reasonably substantial period of time in the recent regular course of its business; or otherwise misrepresenting the price at which such merchandise has been sold or offered for sale by the respondent.

2. Using the words "manufacturer's list price," "suggested list price," "factory suggested retail price," or words of similar import, unless the merchandise so described is regularly offered for sale at this or a higher price by a substantial number of the principal retail outlets in the trade area; provided, however, that this order shall not apply to point-of-sale offering and display of merchandise which is preticketed by the manufacturer or distributor thereof and the obliteration or removal of which preticketed price is impossible or impractical.

3. Representing in any manner that by purchasing any of its merchandise, customers are afforded savings amounting to the difference between respondent's stated price and any other price used for comparison with that price, unless a substantial number of the principal retail outlets in the trade area regularly offer the merchandise for sale at the compared price or some higher price or unless respondent has offered such merchandise for sale at the

compared price in good faith for a reasonably substantial period of time in the regular recent course of its business.

It is further ordered, That respondent Giant Food 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 order to cease and desist contained herein.

Commissioner MacIntyre does not concur with the action of the Commission in this instance. His views on the issues raised by respondent's motion, which have been fully set forth in his statements of non-concurrence in *Clinton Watch Company, et al.* (Docket 7434, Order on Petition to Reopen Proceeding, February 17, 1964) [64 F.T.C. 1443], *The Regina Corporation* (Docket 8323, Order Reopening Proceeding and Modifying Cease and Desist Order, April 7, 1964) [65 F.T.C. 246] and his statement on the issuance of the *Revised Guides Against Deceptive Pricing* issued January 8, 1964, need no repetition here.