

Complaint

IN THE MATTER OF

BENSON & RIXON COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1036. Complaint, Jan. 20, 1966—Decision, Jan. 20, 1966*

Consent order requiring Chicago, Ill., distributors of flags and banners to cease misrepresenting themselves as manufacturers through use of the word "Manufacturers" on letterheads and in advertising and promotional material, and preticketing their flag kits with a deceptive retail selling price.

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 Benson & Rixon Company, a corporation, Loyal Flag Company, a corporation, and Edward Freeman and Donald B. Weren, 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 Loyal Flag Company 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 230 South State Street, Chicago, Illinois.

Edward Freeman and Donald B. Weren are individuals and officers of said 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 as individuals and as officers is the same as that of the corporate respondent.

PAR. 2. The respondent Benson & Rixon Company 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 230 South State Street, Chicago, Illinois.

Said Benson & Rixon Company owns one hundred per cent (100%) of the stock of said Loyal Flag Company. The individual

respondents are also officers of the said Benson & Rixon Company. Respondent Benson & Rixon Company furnishes space in its warehouse and in its office to the said Loyal Flag Company and the named individual respondents for the purpose of conducting their business and carrying out the practices hereinafter alleged. Respondent Benson & Rixon Company has at all times mentioned herein aided, abetted, and acquiesced in the practices of the said Loyal Flag Company and the individual respondents.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of flag kits, to retailers and dealers for resale to the consuming public, to civic and fraternal organizations such as Lions Clubs and boy scouts and to premium houses and advertising agencies for sale and distribution.

PAR. 4. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of the aforesaid articles of merchandise, respondents state on their letterheads and in advertising and promotional material, "Manufacturers of Flags—Flag Kits—Banners."

PAR. 6. Through the use of the aforesaid statement and representation and others similar thereto, but not expressly set out herein, respondents have represented, and are now representing, that they own, operate or control a factory or factories wherein their said articles of merchandise are manufactured, and that they are the manufacturers of said articles of merchandise.

PAR. 7. In truth and in fact, said respondents do not own, operate, or control a factory or factories wherein said articles of merchandise are manufactured, and do not manufacture any of the articles of merchandise sold by them.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

PAR. 8. There is a preference on the part of members of the purchasing public for dealing directly with manufacturers of

products rather than with outlets, distributors, jobbers or other intermediaries, such preference being due in part to a belief that, by dealing directly with the manufacturer, lower prices and other advantages may be obtained, a fact of which the Commission takes official notice.

PAR. 9. Respondents for the purpose of inducing the purchase of their flag kits have engaged in the practice of preticketing said merchandise by imprinting, or causing to be imprinted, in large and conspicuous numerals on packages containing said kits the price amount, "\$6.95."

PAR. 10. Through the use of the aforesaid pricing practice, respondents represented and now represent, directly or by implication, that said price amount is respondents' good faith estimate of the actual retail price of said merchandise and does not appreciably exceed the highest price at which substantial sales are made in their trade area.

PAR. 11. In truth and in fact, said price amount is not respondents' good faith estimate of the actual retail selling price of said merchandise and appreciably exceeds the highest price at which substantial sales are made in respondents' trade area.

PAR. 12. By the aforesaid practice, respondents place in the hands of retailers and others the means and instrumentalities by and through which they may deceive and mislead the purchasing public as to the actual retail selling price of said flag kits in respondents' trade area.

PAR. 13. In the course and 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 flag kits of the same general kind and nature as those sold by respondents.

PAR. 14. 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 respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of the 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 un-

Order

69 F.T.C.

fair 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. Respondents Benson and Rixon Company and Loyal Flag Company are corporations that are organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their office and principal place of business located at 230 South State Street, in the city of Chicago, State of Illinois.

Respondents Edward Freeman and Donald B. Weren are officers of the corporate respondent and their address is the same as that of said corporate respondent.

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 Benson & Rixon Company, a corporation, and its officers, and Loyal Flag Company, a corporation, and its officers, and Edward Freeman and Donald B. Weren, individually and as officers of said Loyal Flag Company, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the ad-

vertising, offering for sale, sale, or distribution of flag kits or other merchandise 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 they are manufacturers or that they own, operate or control a factory or other manufacturing facility or facilities or that they manufacture the merchandise offered for sale or sold by them.

2. Representing, by preticketing or in any other manner, that any amount is the retail price of any article of merchandise, unless said amount is respondents' good faith estimate of the said article's actual retail price and said amount does not appreciably exceed the highest price at which substantial sales of said article are made in respondents' trade area.

3. Placing in the hands of jobbers, retailers, dealers and others, the means and instrumentalities by and through which they may mislead or deceive the purchasing public concerning the retail selling price of any article of merchandise in respondents' trade area.

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.
