

IN THE MATTER OF
OVATION COSMETICS, INC., ET AL.

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

Docket C-1056. Complaint, April 8, 1966—Decision, April 8, 1966

Consent order requiring a California marketer of cosmetics and toiletries, to cease entering into agreements with its wholesalers, jobbers, and retailers to fix and maintain the resale prices of its products, and using other unfair practices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (Title 15, U.S.C., Section 41 et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Ovation Cosmetics, Inc. (hereinafter referred to as Ovation), is a corporation organized on August 19, 1963, and is existing and doing business under and by virtue of the laws of the State of California. Respondent Ovation maintains its home office and principal place of business at 19720 Ventura Boulevard, Woodland Hills, California.

PAR. 2. Respondent J. Harry Ebbert, 4703 Louise Avenue, En-

cino, California, is president of corporate respondent Ovation. Together with others, respondent J. Harry Ebbert has been and is responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent Ovation.

In addition, respondent J. Harry Ebbert was formerly engaged in other marketing activities in commerce. As such, this respondent was in part responsible for establishing, supervising, directing and controlling business activities and a system of distribution involving applications and contracts, sales manuals and marketing plans, price lists and other literature similar to the present activities of respondent Ovation as alleged hereinbelow.

In October 1963 respondent J. Harry Ebbert became a principal managing officer of respondent Ovation and participated in the formulation of policies and practices as hereinafter described.

PAR. 3. Respondents are engaged in the purchase, distribution, offering for sale and sale of cosmetics, toiletries, and associated items such as brushes and sponges which are marketed under the tradename "Ovation Cosmetics" (sometimes hereinafter referred to as "cosmetics and toiletries" or "products") to wholesale distributors located in most of the States throughout the United States. The total net volume of sales of such products by respondent Ovation during its first year of operation was in excess of \$390,000 and the total net volume of sales of such products in the first four months of 1965 appears to be in excess of \$500,000.

PAR. 4. In the course and conduct of their business of distributing "Ovation Cosmetics" products, the respondents ship or cause such products to be shipped from the State in which they are warehoused to wholesale distributors located in various other States throughout the United States who engage in resale to dealers and to members of the public. There is now and has been for more than one year a constant and substantial flow of such products in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. Respondents, their wholesale distributors and dealers in the course and conduct of their business in distributing, offering for sale, and selling "Ovation Cosmetics" products are in substantial competition in commerce with one another and with other firms or persons engaged in the manufacture or distribution of similar products, except to the extent that such actual and potential competition has been lessened, hampered, restricted, and restrained by reason of the practices hereinafter alleged.

PAR. 6. Respondents have formulated a distribution system involving wholesale distributors, jobbers, and retailers and they have published policies or plans which are set forth in respondents' price lists, marketing manuals, sales bulletins, order forms, pamphlets, and other materials and literature. To effectuate and carry out the aforesaid distribution system, policies or plans, respondents together with their said distributors, jobbers, and retailers have entered into certain contracts, agreements, combinations and understandings pursuant to which respondents are enabled to, and do, establish, fix, or control the prices at which "Ovation Cosmetics" products are resold. More specifically:

1. Respondent Ovation has entered into a distributor agreement with each of its direct wholesale distributors in which the said distributor agrees to maintain the resale prices, discounts, rebates, and other terms or conditions of sale established and set forth by respondents.

2. Agents or officials of respondent Ovation have advised its direct wholesale distributors that failure to adhere to the marketing plan and to the prices, discounts, etc., contained therein is a basis for cancellation of their sales agreement.

3. Respondent Ovation has entered into a combination in which each of the direct wholesale distributors and his resale jobbers agree to maintain the resale prices, discounts, rebates, and other terms or conditions of resale established and set forth by respondents.

4. Respondent Ovation has entered into a combination in which each of the direct wholesale distributors, his resale jobbers, and the retailers purchasing from each of them agree to maintain the resale prices and other terms or conditions of resale established and set forth by respondents.

PAR. 7. The planned common course of action, combination, contracts, agreements, understandings and courses of dealing described herein constitute unfair acts or practices and an unfair method of competition in commerce within the intent and meaning 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

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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 Ovation Cosmetics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 19720 Ventura Boulevard, Woodland Hills, California.

Respondent J. Harry Ebbert is an officer of said corporation and his address is 4703 Louise Avenue, Encino, California.

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 respondent Ovation Cosmetics, Inc., a corporation, its officers, agents, representatives, employees, successors and assigns, and respondent J. Harry Ebbert, individually and as an officer of Ovation Cosmetics, Inc., his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of goods or commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, maintaining, or enforcing any contract, agreement, understanding, marketing system, or course of conduct with any dealer or distributor of such goods or commodities to do or perform or attempting to do or perform any of the following acts, practices, or things:

(a) Fix, establish, or maintain the prices, discounts, rebates, or other terms or conditions of sale relating to

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pricing upon which such goods or commodities may be resold;

(b) Require or coerce any person or firm to enter into a contract, agreement, understanding, marketing system, or course of conduct which fixes, establishes, or maintains the prices, discounts, rebates, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold.

2. Engaging, either as part of any contracts, agreements, understandings, or courses of conduct with any distributor or dealer of any such goods or commodities, or individually and unilaterally, in the practice of:

(a) Publishing or distributing, directly or indirectly, any resale price, product price list, order form, report form, or promotional material which employs resale prices for such goods or commodities without stating clearly and visibly in conjunction therewith that said price or prices are only "suggested" or "recommended";

(b) Publishing or distributing, directly or indirectly, any sales manual or instructional material which employs sample resale prices for such goods or commodities for purpose of demonstration without stating clearly and visibly in conjunction therewith that said price, rate of discount, rate of rebate, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold are not binding upon the distributor or dealer:

(c) Entering into, maintaining, enforcing, or threatening to enforce any contracts, agreements, rights, or privileges pursuant to or claimed by virtue of the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, for a period of three (3) years from the date of this order.

Provided, however, That nothing contained in this order shall be interpreted as prohibiting respondents from, directly or indirectly, refusing to sell to or enforcing or asserting their lawful contract or other rights against any wholesale distributor, jobber, retailer, or any other person or company for any legitimate reason unrelated to pricing.

It is further ordered, That respondent Ovation Cosmetics, Inc., within sixty (60) days from the date of service upon it of this order, shall mail a copy of the order to each person or firm res-

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pondent has reason to believe may be engaged in the resale of any "Ovation Cosmetics" product.

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

THE PROCTER & GAMBLE COMPANY ET AL.

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

Docket 7542. Complaint, July 14, 1959—Decision, April 11, 1966

Order reopening and modifying an existent cease and desist order of June 30, 1960, 56 F.T.C. 1623, against a major soap and detergent manufacturer by broadening the prohibitions against false advertising.

ORDER REOPENING PROCEEDING AND MODIFYING
ORDER TO CEASE AND DESIST

The Commission, pursuant to Section 5(b) of the Federal Trade Commission Act and Section 3.28(b) of the Commission's Procedures and Rules of Practice, having served upon respondents an order to show cause, if any there be, why this proceeding should not be reopened and the order to cease and desist modified in the manner set forth in said Show Cause Order; and

The respondents and counsel for the Commission having thereafter executed an agreement consenting to the reopening of this proceeding and to a modification of the order to cease and desist; and

The Commission having considered the agreement, hereby accepts same, and enters the following order:

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the cease and desist order entered herein on June 30, 1960 [56 F.T.C. 1623], be, and it hereby is, modified by striking from said order the paragraph numbered 2 and substituting therefor the following:

2.(a) Representing, or causing the representation to be made, in any advertisement or commercial, either di-

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rectly or by implication, that any manufacturer of appliances for washing clothes or dishes has made the determination or judgment that any of Respondents' soap, detergent, or bleach products is more suitable for use in its machines than a product or products of the same type produced or sold by others; or otherwise misrepresenting the nature or extent of any endorsement of Respondents' products by an appliance manufacturer or marketer: *Provided, however*, That it shall be a defense to any enforcement proceeding hereunder for Respondents to establish that such manufacturer or marketer has made such determination or judgment.

2.(b) Representing, or causing the representation to be made, directly or by implication, in any advertisement or commercial prepared and furnished by Respondents under an agreement between Respondents and any manufacturer or marketer of appliances for washing clothes or dishes, that such manufacturer or marketer endorses or recommends the use of, or packs a sample of, Respondents' soaps, detergent or bleach products in its appliances, unless Respondents clearly, conspicuously and explicitly disclose that pursuant to an agreement, Respondents have (1) supplied sample products to such manufacturer or marketer for packing in its appliances; (2) agreed to feature or mention such appliances, in commercials or advertisements, or (3) agreed to pay such manufacturer or marketer other valuable consideration, as the case may be.

2.(c) Representing, or causing the representation to be made, in any advertisement or commercial, either directly or by implication, that one or more manufacturers or marketers of appliances for washing clothes or dishes packs a sample of Respondents' product in its appliances unless Respondents clearly, conspicuously and explicitly disclose the fact that such sample products are supplied by Respondents.

It is further ordered, That the respondents, The Procter & Gamble Company, a corporation, and The Procter & Gamble Distributing Company, a corporation, 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 the aforesaid order as modified hereby.

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IN THE MATTER OF

SUN ELECTRIC CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 8659. Complaint, April 26, 1965—Decision, April 14, 1966*

Order dismissing a complaint against a Chicago, Ill., manufacturer of automotive testing equipment, charging that it had illegally suppressed competition in the repair of such equipment, the allegations not sustained by evidence.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named in the caption hereof, and more particularly described and referred to hereafter as respondent, has violated the provisions of Section 5 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 respect thereto as follows:

PARAGRAPH 1. Respondent, Sun Electric Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its general office and place of business located at 6323 Avondale Avenue, Chicago, Illinois.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, distribution and sale of automotive and aircraft testing equipment, electronic equipment, and parts and accessories necessary thereto. Respondent sells automotive testing equipment manufactured by it directly to garages, service stations and others engaged in the repair of automobiles through its general office in Chicago, Illinois, and through numerous branch offices located in various States of the United States. Respondent is the dominant manufacturer of automotive testing equipment in the United States, and its sales of such equipment in the United States are substantial. During the period 1959-1963, respondent's sales of automotive testing equipment ranged from \$5,000,000 to \$7,000,000 annually.

PAR. 3. Respondent is also engaged in the repair of automotive testing equipment manufactured by it. Respondent maintains re-