
IN THE MATTER OF

MARY CARTER PAINT COMPANY, INC., ET AL.

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

Docket 8290. Complaint, Feb. 15, 1961—Decision, Aug. 17, 1966

Order modifying, pursuant to a remand from the Supreme Court on Nov. 8, 1965, 382 U.S. 46 (7 S.&D. 1403), which reversed a decision of the Court of Appeals, Fifth Circuit, 333 F. 2d 654 (7 S.&D. 929), a cease and desist order of June 28, 1962, 60 F.T.C. 1827, against a paint seller by requiring the company to state the usual price of a single can of paint in making its "Every Second Can Free" offer.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on June 28, 1962 [60 F.T.C. 1827], having issued an order requiring respondents, in connection with the offering for sale, sale and distribution in commerce of paint or any other product, to cease and desist from representing, directly or by implication:

(a) That any amount is respondents' customary and usual retail price of any merchandise when said amount is in excess of the price at which such merchandise is customarily and usually sold by respondents at retail in the recent and regular course of business;

(b) That any article of merchandise is being given free or as a gift, or without cost or charge, when such is not the fact . . . (60 F.T.C. 1827, 1845); and

The United States Court of Appeals for the Fifth Circuit on June 19, 1964, having set aside such order of the Commission (333 F. 2d 654) [7 S.&D. 929]; and the Supreme Court on November 8, 1965 [7 S.&D. 1403], having reversed that decision and having remanded the case to the Court of Appeals with directions to remand to the Commission for clarification of its order; and the Court of Appeals, on January 5, 1966, having recalled and vacated its 1964 judgment and remanded the matter to the Commission for such purpose, and

The Commission on June 6, 1966, having issued its order to respondents to show cause why paragraph (b) of its cease and desist order of June 28, 1962, should not be modified, and

The respondents having failed to answer said order to show cause within the period provided in the Commission's order to show cause, and

The Commission being of the opinion that appropriate clarification of paragraph (b) of its order of June 28, 1962, will be provided by the modified paragraph (b) set forth in its order to show cause dated June 6, 1966,

It is ordered, That the Commission's order to cease and desist dated June 28, 1962, be, and it hereby is, modified by substituting the following paragraph for paragraph (b) of that order:

(b) That any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price

Complaint

70 F.T.C.

at which such merchandise has been sold separately for a substantial period of time in the recent and regular course of business in the trade area in which the representation is made.

Commissioner Elman not participating.

