

IN THE MATTER OF

PARENTS' MAGAZINE ENTERPRISES, INC., ET AL.

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

Docket C-1133. Complaint, Oct. 25, 1966—Decision, Oct. 25, 1966

Consent order requiring a New York City publisher of a magazine for parents to cease deceptively representing that its "Commendation Seal" awarded to its advertisers is based on evaluation of the advertisers' products by independent individuals, laboratories, or organizations.

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 Parents' Magazine Enterprises, Inc., a corporation, and George J. Hecht, Allison R. Leininger, and Edward A. Sand, 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 Parents' Magazine Enterprises, 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 52 Vanderbilt Avenue, in the city of New York, State of New York.

George J. Hecht is chairman of the board, Allison R. Leininger is chairman of the executive committee, and Edward A. Sand is

president, of the corporate respondent. These individuals direct, formulate and control the acts, practices and policies of the corporate respondent, including those hereinafter referred to. Their business address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in publishing various periodicals and magazines, and in the distribution and sale thereof to retailers for resale to the consuming public and directly to the consuming public. Among such publications is a magazine known as "Parents' Magazine."

Respondents are also engaged in the issuance of a seal of commendation to manufacturers who advertise in "Parents' Magazine."

PAR. 3. In the 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 magazines and periodicals of the same general kind and nature as that sold by respondents.

PAR. 4. In the course and conduct of their business in connection with the sale and distribution of "Parent's Magazine" respondents now cause and for some time last past have caused, said magazine to be delivered to purchasers thereof, located in the various States of the United States other than the State of publication and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said publication and related enterprises 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 advertisers to advertise their products and services in the said "Parents' Magazine" and for the purpose of inducing the purchase of the various products and services advertised therein, respondents have engaged in the following acts and practices:

Respondents with certain qualifications and requirements hereinafter set forth, offer to various advertisers in said "Parents' Magazine" the use of a seal which is circular in shape, and contains the language:

COMMENDED BY PARENTS' MAGAZINE as advertised therein

In each issue of said magazine there appears the following:

WHAT THE PARENTS' MAGAZINE SEAL MEANS

Products eligible for Parents' Magazine Commendation Seal are awarded the seal only after Parents' Magazines' technical staff and/or medical consultants have studied them and the claims made for them. The largest independent, diversified testing laboratory in the United States is employed on an annual retainer to do whatever tests are required.

Upon the granting of the use of commendation seal by respondents, advertisers in "Parent's Magazine" are entitled to display the commendation seal in advertisements placed in said magazine, and to use said seal elsewhere on and in connection with the products or services which have been awarded the commendation seal.

PAR. 6. By and through the use of the aforesaid commendation seal, and the above quoted statements, respondents have represented, directly or by implication, that "Parents' Magazine's" commendation seal is awarded to only those products or services that have been evaluated by qualified technicians, medical experts or an independent testing laboratory and found to fulfill all claims made for such products or services in Parents' Magazine advertisements.

PAR. 7. In truth and in fact the aforesaid commendation seal is not awarded to only those products or services that have been evaluated by qualified technicians, medical experts or an independent testing laboratory and found to fulfill all claims made for such products or services in Parents' Magazine advertisements. Some products or services are awarded the aforesaid commendation seal solely on the recommendation of "Parents' Magazine" staff members who are not qualified technicians or medical experts or on the basis of tests and reports submitted by the applicant for the seal, or on the basis of an editorial staff decision based on the reputation of the applicant.

Further, an advertising contract between the respondents and advertisers in said magazine is a condition precedent to any consideration for the awarding of the seal of commendation.

Moreover, respondents, by granting the seal of commendation to advertisers of products and services in said magazine place in the hands of said advertisers an instrumentality whereby such advertisers are enabled to mislead or deceive the consuming public.

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

PAR. 8. The use by respondents of the aforesaid false, mislead-

ing 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 such statements and representations were and are true and into the purchase of substantial quantities of the products and services advertised therein displaying the commendation seal by reason of said erroneous and mistaken belief.

PAR. 9. 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 methods of competition in commerce and unfair 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. Respondent Parents' Magazine Enterprises, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 52 Vanderbilt Avenue, in the city of New York, State of New York.

Respondents George J. Hecht, Allison R. Leininger and Edward A. Sand are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the sub-

ject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Parents' Magazine Enterprises, Inc., a corporation, and George J. Hecht, Allison R. Leininger and Edward A. Sand, individually and as officers of said corporation, and respondents' officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of advertising, distribution of any publication, or the awarding of their commendation seal, or other similar device, 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 award, seal or other commendation is granted, made or presented on the basis of evaluations or tests of products or services by individuals, laboratories or organizations to determine the quality or merits of such products or services or the validity of the claims made therefor: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted for violation hereof for respondents to affirmatively establish that the award, seal or other commendation has been granted, made or presented (1) on the basis of good faith evaluations by employees of or consultants retained by respondents, whom respondents have reason to believe in good faith are qualified to determine the quality or merits of such products or services and the validity of the claims made therefor, or (2) on the basis of good faith evaluations by employees of or consultants retained by respondents, whom respondents have reason to believe in good faith are qualified therefor, of tests of products or services made by employees of or consultants retained by respondents whom, or individuals, laboratories or organizations which, respondents have reason to believe in good faith are qualified to determine the quality or merits of such products or services and the validity of the claims made therefor.

2. Granting, making or presenting any award, seal or other commendation which represents, directly or by implication, or which enables the recipient thereof to represent, directly or by implication, that any product or service receiving it has been evaluated or tested by individuals, laborator-

ies or organizations to determine the quality or merits of any such product or service or the validity of the claims made therefor: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted for violation hereof for respondents to affirmatively establish that the award, seal or other commendation has been granted, made or presented (1) on the basis of good faith evaluations by employees of or consultants retained by respondents, whom respondents have reason to believe in good faith are qualified to determine the quality or merits of such products or services and the validity of the claims made therefor, or (2) on the basis of good faith evaluations by employees of or consultants retained by respondents, whom respondents have reason to believe in good faith are qualified therefor, of tests of products or services made by employees of or consultants retained by respondents whom, or individuals, laboratories or organizations which, respondents have reason to believe in good faith are qualified to determine the quality or merits of such products or services and the validity of the claims made therefor.

3. Failing to clearly disclose in connection with any statement in respondents' publications with respect to an award or other commendation conferred upon a particular product or service, the basis upon which such commendation was made, including the disclosure of the fact, when such is the case, that the evaluations or tests have been made, in whole or in part, by non-technical and/or non-medical persons; or misrepresenting in any manner the qualifications or training of those making respondents' evaluations or tests.

4. Misrepresenting in any manner the basis upon which respondents' awards, seals or commendations are granted.

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.

Order

70 F.T.C.

IN THE MATTER OF

DAYCO CORPORATION

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

Docket 7604. Complaint, Oct. 1, 1959—Decision, Oct. 27, 1966

Order modifying a cease and desist order of August 5, 1964, 66 F.T.C. 423, against a Dayton, Ohio, automotive parts manufacturer by vacating the price discrimination provision, pursuant to a remand order of the Court of Appeals, Sixth Circuit, 362 F. 2d 180 (8 S.&D. 327), and enforcing the prohibition against resale price fixing.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Respondent having filed in the United States Court of Appeals for the Sixth Circuit a petition to review and set aside the order to cease and desist issued herein on August 5, 1964 [66 F.T.C. 423]; and that court on June 17, 1966 [8 S.&D. 327], having issued its opinion and on July 5, 1966, having issued its order affirming and enforcing the portion of the order to cease and desist issued pursuant to Section 5 of the Federal Trade Commission Act; and vacating the portion of the order to cease and desist issued pursuant to Section 2(a) of the Clayton Act; and the court having remanded this matter to the Commission for further proceedings consistent with the court's opinion; and the Commission, having concluded after due consideration that no further proceedings are warranted:

It is ordered, That the order to cease and desist in this matter be, and it hereby is, modified to read as follows:

It is ordered, That respondent, Dayco Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device in, or in connection with, the sale or distribution of automotive parts and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Putting into effect, continuing or maintaining any merchandising or distribution plan or policy under which agreements or understandings are entered into with resellers of such products which have the purpose