

IN THE MATTER OF

NEW CENTURY ENTERPRISES, INC., ET. AL.

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

Docket 8734. Complaint, Mar. 13, 1967—Decision, Feb. 12, 1968

Consent order requiring a Salt Lake City, Utah, distributor of appliances and other merchandise to cease representing falsely that it conducts surveys and contests, that its prospective customers will receive prizes or free merchandise, that its customers are especially selected, and that the prices of its products are special or reduced.

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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 New Century Enterprises, Inc., a corporation, formerly known as Northwest Housewares, Inc., and David Bigler and Keith Bigler, 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 New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 1260 East Vine Street, Salt Lake City, Utah.

Respondents David Bigler and Keith Bigler are officers of said corporation. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their 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 the advertising, offering for sale, sale and distribution of household appliances, books, tools and other merchandise to the public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said merchandise when sold, to be shipped from their place of business in the State of Utah to purchasers thereof located in various other States of the United States and maintain, and at all times herein mentioned have maintained, a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, the respondents and their salesmen and other representatives have made numerous statements and representations to prospective customers, orally and otherwise, with respect to their said products and the methods employed by them in promoting the sale thereof.

*Reported as amended by Hearing Examiner's order of Mar. 27, 1967, by substituting the word "respondents" for the word "dealers" in Paragraph 4.2. and substituting the word "respondents" for the words "the aforesaid dealers" in Paragraph 4.6.

Typical and illustrative of the foregoing statements and representations are the following:

1. That respondents are conducting a survey and that prospective customers' names will be entered in a drawing or contest to be held in connection with the survey.
2. That prospective customers have won prizes in a drawing or contest and must make an appointment with one of the respondents' representatives in order to receive such prizes.
3. That customers are especially selected in order to promote the sale of respondents' products.
4. That customers are receiving reduced prices or a "special introductory offer" in order to promote the trade names of the merchandise sold by respondents and that savings are thereby afforded to purchasers from respondents' regular prices.
5. That customers making an initial purchase from the respondents may thereafter purchase their merchandise at a 50 percent discount from the respondents' regular prices.
6. That when customers purchase one item from respondents, other items are awarded to such customers as a gift or "at no extra cost" or that they are "free."

PAR. 5. In truth and in fact:

1. The respondents are not conducting a survey and prospective customers' names are not entered in a drawing or contest to be held in connection with a survey or otherwise. Respondents are only seeking information about prospective customers' appliance needs and credit ratings which is used by respondents as a basis to determine whether an attempt shall be made to sell such customers merchandise.
2. Persons do not win prizes at drawings or any other type of contest but are so notified because such persons appear to be good prospects for the sale of merchandise. Appointments are made with prospective customers only for the purpose of selling them merchandise.
3. Respondents' customers are not especially selected. On the contrary, said merchandise is available to anyone with the money or credit rating to take advantage of it.
4. Respondents' customers do not receive reduced prices or a "special introductory offer" but are offered the same prices at which said respondents sold their merchandise in the past and savings are not thereby afforded to such purchasers.
5. Customers making purchases from respondents will not thereafter be able to buy merchandise at a 50 percent or any other substantial discount from said dealers' regular prices.

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6. Customers of the aforesaid respondents do not receive additional merchandise as a gift or "at no extra cost" or "free," but the price of any additional items of merchandise is included in the price that such customers pay for the major or principal item sold by said respondents, and the major item required to be purchased has never been sold separately in substantial quantities at such prices.

Therefore the statements and representations set forth in Paragraph Four are false, misleading and deceptive.

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said merchandise, the respondents circulate among the consuming public leaflets and other data containing retail pricing representations.

Typical and illustrative of the aforesaid representations are the following:

WALTHAM, Sea Fall, Value \$69.50

[Picture of the watch]

Air-Way Sanitizer "SS", Value \$259.85

[Picture of the assembled machine and the separate parts]

7" HEAVY DUTY POWER SAW

[Picture of the saw]

Value \$59.50

PAR. 7. Through the use of the aforesaid representations, and others similar thereto but not specifically set forth herein, respondents have represented, directly or indirectly, that said stated prices, accompanied by the word "VALUE" are not appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made.

PAR. 8. In truth and in fact:

The aforesaid stated prices accompanied by the word "VALUE" were appreciably in excess of the highest prices at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations appeared.

Therefore, the aforesaid representations set forth in Paragraphs Six and Seven hereof were and are false, misleading and deceptive.

PAR. 9. 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 housewares products of the same general kind and nature as that sold by respondents.

PAR. 10. The use by the 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' said appliances, books and other merchandise.

PAR. 11. The aforementioned 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 issued its complaint in this proceeding on March 13, 1967, charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with a copy of that complaint; and

Upon motion of respondents and for good cause shown, the Commission, having on October 24, 1967, pursuant to § 2.34(d) of its Rules, withdrawn the matter from adjudication and granted respondents opportunity to negotiate, under Subpart C of Part 2 of its Rules, a settlement by the entry of a consent order; and

Respondents and counsel supporting complaint having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of 30 days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby makes the following jurisdictional findings, and enters the following order to cease and desist in disposition of the proceeding:

1. Respondent New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah,

with its principal office and place of business located at 1260 East Vine Street, Salt Lake City, Utah.

Respondents David Bigler and Keith Bigler 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 subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents New Century Enterprises, Inc., formerly known as Northwest Housewares, Inc., a corporation, and its officers, and David Bigler and Keith Bigler, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of household appliances, books, tools or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication:

1. That they are conducting a survey, drawing or contest in connection with the sale of merchandise.

2. That prospective customers' names will be entered in a drawing or contest held in connection with a survey.

3. That prospective customers have won prizes or "free" merchandise: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that such customers have in fact won prizes or free merchandise in a bona fide contest or drawing.

4. That prospective purchasers of any merchandise sold by respondents are especially selected.

5. That any offer or price constitutes an introductory offer or price; or representing that any price is a special or reduced price: *Provided, however*, That it shall be a defense in any enforcement proceeding instituted hereunder for the respondents to establish that such price constitutes a significant reduction from the price at which such merchandise has been sold in substantial quantities or offered for sale in good faith for a reasonably substantial period of time, by respondents in the recent, regular course of their business.

6. That customers making initial purchases from respondents will thereafter be able to buy merchandise from re-

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spondents at a 50 percent discount or at any other substantial discount from respondents' regular prices.

7. That any item of merchandise which is sold or offered for sale in conjunction or combination with other merchandise is a gift or without extra cost or is free.

B. Falsely representing, in any manner, that savings are available to purchasers or prospective purchasers of respondents' merchandise or misrepresenting in any manner the amount of savings available to purchasers or prospective purchasers of respondents' merchandise at retail.

C. Using the word "value" or any word or words of similar import to refer to any amount which is appreciably in excess of the highest price at which substantial sales of such merchandise have been made in the recent regular course of business in the trade area where such representations are made; or otherwise misrepresenting the price at which such merchandise has been sold in the trade area where such representations are made.

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.