

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

Docket C-1547. Complaint, June 16, 1969—Decision, June 16, 1969

Consent order requiring a Washington, D.C., retailer of clothing, furniture and appliances to cease misusing the word "free," inducing customers

to sign partially completed contracts, misrepresenting finance charges and conditions, and failing to disclose the legal effect of installment payment default.

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 District Credit Clothing & Furniture, Inc., a corporation, and Sidney Gimble, individually and as an officer 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 District Credit Clothing & Furniture, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 707 7th Street, NW., Washington, D.C.

Respondent Sidney Gimble is an individual and is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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 the advertising, offering for sale, sale and distribution of clothing, furniture, appliances and other items of merchandise at retail to the public.

PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said merchandise to be sold, to purchasers located within the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise 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 have made, numerous statements and representations in advertisements inserted in newspapers of which the following are typical and illustrative, but not all inclusive thereof:

Complaint

75 F.T.C.

DISTRICT CLOTHING CO.

707 7TH ST., N.W.

ST 3-0120

JUST ARRIVED!

114-PC.

DINNER ENSEMBLE

Complete Service for 8

Including Matching Glassware

Also . . . New Serving Platter

& Vegetable Bowl

[Picture of dinner ensemble]

\$19.95

No Money Down

Only \$1.00 wkly.

On Approved

Credit

FREE:

During this

great sale, ex-

tra 32-pc.

chrome stain-

less steel table

ware.

ORDER BY MAIL—COME IN—PHONE IN

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein, the respondents have represented, directly or by implication that the 32 piece chrome stainless steel tableware set is given "Free" of cost with the purchase of their 114 piece dinner ensemble.

PAR. 6. In truth and in fact, the 32 piece chrome stainless steel tableware set is not given "Free" of cost with the purchase of respondents' 114 piece dinner ensemble, as the cost of both such items is included in the price of the combination offer, and the item required to be purchased has never been sold separately in substantial quantities.

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

PAR. 7. In the further course and conduct of their aforesaid business and for the purpose of inducing members of the public to purchase four year subscriptions to various magazines such as Tan, Jet and Ebony, and to purchase pictures of various nota-

ble people such as Martin Luther King, Jesus Christ and Mr. & Mrs. John F. Kennedy, respondents employ door-to-door salesmen who offer a "package deal" to consumers at a price of \$69.95. The aforesaid salesmen represent to the consumer either that one of the aforementioned pictures would be received free with a purchase of the aforementioned magazine subscriptions, or that the aforementioned magazine subscriptions would be received free with the purchase of one of the aforementioned pictures.

PAR. 8. In truth and in fact, pictures of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy or subscriptions to magazines such as Tan, Jet and Ebony are not given free with the purchase of either items, as the selling price of \$69.95 includes the cost of both the magazine subscriptions and the pictures, and the magazine subscriptions purchased have not been sold by respondents separately in substantial quantities.

Therefore, the statements and representations as set forth in Paragraph Seven herein were and are false, misleading and deceptive.

PAR. 9. In the further course and conduct of their aforesaid business, and for the purpose of inducing the purchase of sets of aluminum pots and pans, respondents' door-to-door salesmen represented to consumers that a picture of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy would be received free with the purchase of the set of aluminum pots and pans at the price of \$59.95 plus tax and 10 percent carrying charges.

PAR. 10. In truth and in fact, a picture of either Martin Luther King, Jesus Christ or Mr. & Mrs. John F. Kennedy is not given free with the purchase of the set of aluminum pots and pans at the price of \$59.95 plus tax and 10 percent carrying charges, as the cost of both items is included in the aforesaid price.

Therefore, the statements and representations as set forth in Paragraph Nine hereof were and are false, misleading and deceptive.

PAR. 11. In the course and conduct of respondents' business, respondents have represented in newspaper advertisements that an amount appearing in conjunction with an article of merchandise is the full price of said merchandise and that the price of the merchandise can be paid at a specific weekly rate, such as one dollar per week.

In truth and in fact, the represented price is not the full price of the advertised merchandise. Respondents add on to the ad-

vertised price a 10 percent carrying charge for all items financed for more than 90 days. Further, it is respondents usual and customary practice to arrange installments for their customers in amounts in excess of one dollar per week.

Therefore, the aforesaid representations were and are false, misleading and deceptive.

PAR. 12. In the course and conduct of respondents' business, respondents have engaged in the following unfair and deceptive acts and practices.

1. Respondents have induced purchasers of their merchandise to sign blank or partially complete sales contracts which respondents later complete as to price. In some instances, the customer later receives a bill for the merchandise for a substantially greater amount than requested by respondents' salesmen and understood by the purchaser at the time of the execution of the contract.

2. Respondents have failed to provide their customers with a copy of their executed contracts at the time of consummation of the sale or at any time thereafter.

3. Respondents have caused purchasers of their merchandise to execute conditional sale contracts without disclosing the material fact that respondents regularly and systematically enforce such contracts by obtaining judgments in courts of law after purchasers have defaulted in payment of an installment and then have failed to tender full payment of the outstanding debt as required in said contracts. Further, respondents have in numerous instances sought satisfaction of the judgments through institution of garnishment proceedings against judgment debtors.

PAR. 13. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of clothing, furniture, appliances and other items of merchandise at retail of the same general kind and nature as that sold by respondents.

PAR. 14. The 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 re-

spondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 15. 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent District Credit Clothing & Furniture, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 707 7th Street, NW., Washington, D.C.

Respondent Sidney Gimble is an officer of said corporation and his 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 District Credit Clothing & Furniture, Inc., a corporation, and its officers, and Sidney Gimble, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of clothing, furniture, appliances, and other items of 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 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 at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business.

2. Inducing or causing purchasers of respondents' merchandise to sign blank or partially completed sale contracts or any other contractual instruments which are not fully completed at the time such instruments are executed.

3. Representing, directly or by implication, the rate of a finance charge, the amount of downpayment, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment unless respondents clearly and conspicuously disclose, in immediate conjunction with such representation, all of the following items:

- (a) The cash price.
- (b) The time price, consisting of the sum of the cash price, all finance charges, and any other extra charges before deducting any downpayment or allowance for a trade-in or otherwise.
- (c) The downpayment, if any.

(d) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(e) The rate of the finance charge expressed as an annual percentage rate.

4. Representing, directly or by implication, that a specific periodic consumer credit payment or installment payment can be arranged unless the respondents usually and customarily arrange credit payments or installments for that period and in that amount.

5. Failing to disclose orally and in writing to each customer who executes a conditional sale contract, or who otherwise purchases merchandise or services from respondents on credit, *before* such customer obligates himself to make any such credit purchase, all of the following items:

(a) The cash price of the merchandise or service purchased.

(b) The sum of any amounts credited as down-payment (including any trade-in).

(c) The difference between the amount referred to in paragraph (a) and the amount referred to in paragraph (b).

(d) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(e) The total amount to be financed (the sum of the amount described in paragraph (c) plus the amount described in paragraph (d)).

(f) The amount of the finance charge.

(g) The finance charge expressed as an annual percentage rate.

(h) The total credit price (the sum of the amounts described in paragraph (e) plus the amount described in paragraph (f) and the number, amount, and due dates or periods of payments scheduled to pay the total credit price.

(i) The default, delinquency, or similar charges payable in the event of late payments as well as all other consequences provided in the sales or credit agreements for late or missed payments.

(j) A description of any security interest held or to be retained or acquired by respondents in con-

nection with the extension of credit, and a clear identification of the property to which the security interest relates.

For purposes of paragraphs 3 and 5 of this order, the definition of the term "finance charge" and computation of the annual percentage rate is to be determined under [§ 106 and § 107 of] Public Law 90-321, the "Truth in Lending Act," and the regulations promulgated thereunder.

6. Failing to provide purchasers of respondents' merchandise with a copy of the executed sales contract or any other agreement at the time of execution by the purchaser.

7. Failing to disclose in writing on any conditional sale contract, promissory note or other instrument of indebtedness executed by a purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such purchaser, that:

Any such instrument at respondents' option after a default in installment payments may be enforced in a court of law.

8. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' merchandise, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

ALLEGHANY PHARMACAL CORP., ET AL.

ORDER DISMISSING AN AMENDED COMPLAINT AND REINSTATING AN ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT