

AMERICAN TIRE COMPANY, ET AL.

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

Docket C-1788. Complaint, Aug. 26, 1970—Decision, Aug. 26, 1970

Consent order requiring a Sepulveda, Calif., retailer of automobile tires, batteries and other automotive accessories, to cease using the term "6 ply rated" in any advertising without disclosing the basis of comparison, using "ultra premium" or "1st line" without disclosing that no industry-wide ratings exists, misrepresenting retreaded tires as new, failing to disclose that advertised price does not include tax, misrepresenting the brand name or price of any tire, advertising products to gain access to prospective purchasers of other products, and using deceptive guarantees.

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 American Tire Company, a corporation, and Robert Mirman, 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. American Tire Company is a corporation organized, existing and doing business under and by virtue of the laws of the

State of California with its principal office located at 16730 Schoenborn Street, Sepulveda, California.

Respondent Robert Mirman is an individual and 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 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 and sale at retail to the purchasing public of automobile tires, batteries and other automotive parts and accessories.

PAR. 3. In the course and conduct of their business as aforesaid, respondents operate, through lease arrangements, the automotive departments in a substantial number of department stores in the States of California and Washington. From their principal office in the State of California, respondents transmit to said leased departments, advertising materials, sales manuals, and other material of a commercial nature.

In the further course and conduct of their business, respondents cause to be shipped from their warehouse in the State of California or from the warehouse of their various suppliers in other States, tires, batteries and other automotive parts and accessories to respondents' leased departments for purchase at retail by the general public in said leased departments located in States other than the States from which such shipments originate.

Respondents have engaged in all of the aforesaid acts and practices in the course and conduct of their business and all such acts and practices have a close and substantial relationship to the interstate flow of respondents' business. There is now, and has been at all times mentioned herein, a substantial and continuous course of trade in said tires, batteries and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of the products offered in their leased departments, respondents publish, or cause to be published, in newspapers of general circulation and in brochures distributed through the mails, advertisements containing many statements and representations, direct and by implication, regarding the quality and construction of their tires, the guarantees being offered, the savings which consumers will realize by purchasing at the advertised prices and other matters. By and through such statements and representations, together with, in some instances, respondents fail-

ure to adequately disclose certain material facts in some of the aforesaid advertisements, respondents have engaged in the following unfair and deceptive acts and practices in connection with the advertising, offering for sale and sale of tires and other products.

(1) Used the word "nylon" to describe or designate certain tires without clearly and conspicuously disclosing that it is only the cord material of such tires that was nylon. Respondents' failure to make such disclosure has the capacity and tendency to lead prospective purchasers to believe that it was the entire tire, rather than the cord material, that was of nylon.

(2) Used the term "6 ply rated" to describe or designate certain tires without clearly and conspicuously disclosing (a) the actual number of plies in the tires so described or designated; (b) that there is no industrywide definition of ply rating; and (c) the basis of comparison of the claimed rating. Respondents' failure to make such disclosures has the capacity and tendency to mislead and deceive prospective purchasers as to the actual number of plies in such tires and the quality of the tires so described or designated in comparison with tires offered by others.

(3) Used the terms "ultra premium" and "1st Line" to describe or designate certain tires without clearly and conspicuously disclosing (a) that no industrywide or other accepted system of quality standards or grading of industry products currently exists, and (b) that representations as to grade, line, level or quality relate only to the private standards of the marketer of the tire so described. Respondents' failure to make such disclosures has the capacity to mislead and deceive prospective purchasers to understand and believe that there exists an accepted system of quality standards in the tire industry which enables prospective purchasers to make meaningful comparisons between the tires so described or designated and the tires offered by others.

(4) Used the terms "Nu-Tread" and "Snow-Tread" to describe or designate used tires that had been retreaded without clearly disclosing that the tires so described or designated were retreads or had been retreaded. Respondents' failure to make such disclosure has the capacity and tendency to mislead and deceive prospective purchasers to understand and believe that such tires were new.

(5) Failure to include the applicable Federal excise tax in the advertised price of tires or failed to disclose clearly and conspicuously that such advertised prices do not include the Federal excise tax and to set forth the applicable amount of such tax in

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immediate conjunction with each such advertised price. Respondents' failure to include the amount of the tax in the price of the tire or to make the aforesaid disclosure and set forth the amount of the tax has the capacity and tendency to mislead and deceive prospective purchasers into the mistaken belief that the selling price of such tires is lower than it actually is.

(6) Used the terms "Famous Brand," "Nationally Advertised" and similar terms to describe or designate certain tires, thereby causing prospective purchasers to believe contrary to fact, that the tires so described or designated were among the following brand tires—Firestone, Goodyear, Goodrich, General or U.S. Royal.

(7) Represented, contrary to fact, that certain tires were being offered at prices which reflected a significant reduction from the prices at which the advertised tires had been sold to the public by respondents in the recent, regular course of their business prior to the advertised sale.

(8) Represented, contrary to fact, that respondents had conducted bona fide surveys of competitors' prices in respondents' trade area which established that certain tires were being offered by respondents at prices significantly lower than those being charged by others for the same tires in respondents' trade area.

(9) Represented, contrary to fact, that respondents were making a bona fide offer to sell certain Uniroyal tires. Although respondents may have sold small quantities of such tires from time to time, the real purpose of the advertised offers was to induce prospective purchasers to visit respondents' places of business in the expectation of purchasing Uniroyal tires whereupon respondents' sales personnel could endeavor to sell, and did sell, to many such prospective purchasers, different and less well known brands of tires at a higher price.

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

PAR. 5. In the further course and conduct of their business, respondents have engaged in the following additional unfair and deceptive acts and practices. For the purpose of inducing the sale of their tires, respondents represent that certain of their tires are guaranteed against tread wear-out for a specified number of miles. Respondents further represent that claims under such guarantee will be adjusted on the basis of the price paid by the customer for the adjusted tire and that a comparable replacement tire will be provided, the customer being required to pay only for the mileage used on the adjusted tire.

By and through such representations, respondents lead prospective purchasers to understand and believe that adjustments will be made on a simple pro rata basis and the charge will be a proportionally accurate one calculated on the basis of the percentage of the guaranteed mileage used by the customer.

In truth and in fact, respondents do not make adjustments on a true pro rata basis. Furthermore, respondents fail to disclose in connection with representations of their guarantees that the Federal excise tax will be charged on replacement tires furnished pursuant to the guarantee and fail to disclose other conditions and limitations on such guarantees.

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

PAR. 6. 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 tires, batteries and other automotive parts and accessories.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts 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' merchandise by reason of said erroneous and mistaken belief.

PAR. 8. 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 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 admis-

sion by the 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 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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent American Tire Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 16730 Schoenborn Street, Sepulveda, California.

Respondent Robert Mirman is an individual and officer of said corporation. He formulates, directs and controls the acts and practices of said corporation and his address is the same as that of the 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 American Tire Company, a corporation, and its officers and Robert Mirman, 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 tires, batteries or any other automotive parts or accessories or any other merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Referring, in consumer advertising, to the cord material in a tire unless such material is identified by its generic name and respondents clearly and conspicuously disclose in immediate conjunction with each such reference that it is only the cord that is of the designated material.

(2) Using, in consumer advertisings, the terms "6 ply rated," "6 ply rating" or any other representation, direct or by im-

plication, that a tire has any numerical ply rating without disclosing clearly and conspicuously the actual number of plies in the tire so described and (a) that there is no industrywide definition of ply rating and (b) the basis of comparison of the claimed rating.

(3) Using, in consumer advertising, the terms "ultra premium," "1st Line" or any other designation of grade, line, level or quality to describe or designate a tire without disclosing clearly and conspicuously that (a) no industrywide or other accepted system of quality standards or other accepted system of grading of industry products currently exists and (b) representations as to grade, line, level or quality relate only to the private standard of the marketer of the tire so designated or described.

(4) Advertising or offering for sale used tires which have been retreaded without clearly and conspicuously describing or designating such tires as retreaded or retreads; misrepresenting, in any manner, that used tires are new.

(5) Failing to include the applicable Federal excise tax in the advertised price of a tire, or in the alternative, failing to disclose clearly and conspicuously that such advertised price does not include the Federal excise tax and failing to set forth the applicable amount of such tax clearly and conspicuously with such advertised price; misrepresenting, in any manner, the actual selling prices of respondents' tires or other merchandise.

(6) Using the terms "Famous Brand," "Nationally Advertised," "Famous Manufacturer's Brand" or any other words or phrases of similar import or meaning to describe or designate tires unless respondents disclose clearly and conspicuously in immediate conjunction with any such description or designation the brand name of such tires and the name of the manufacturer thereof; misrepresenting, in any manner, the brand name or the manufacturer of tires or any other merchandise offered for sale by respondents.

(7) (a) Representing, in any manner, that by purchasing any of respondents' tires or other merchandise, customers are afforded savings amounting to the difference between respondents' stated price and respondents' former price unless such tires or other merchandise have been sold at the former price by respondents for a reasonably substantial period of time in the recent regular course of their business.

(b) Representing, in any manner, that by purchasing any of respondents' tires or other merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared price for said tires or other merchandise in respondents' trade area unless a substantial number of the principal retail outlets in the trade area regularly sell said tires or other merchandise at the compared price or some higher price.

(c) Representing, in any manner, that by purchasing any of respondents' tires or other merchandise, customers are afforded savings amounting to the difference between respondents' stated price and a compared value for comparable tires or other merchandise, unless substantial sales of tires or other merchandise of like grade and quality are being made in the trade area at the compared price or higher and unless respondents have in good faith conducted a market survey or obtained a similar representative sample of prices in their trade area which establishes the validity of said compared price and it is clearly and conspicuously disclosed that the comparison is with tires or other merchandise of like grade and quality.

(d) Representing, directly or by implication, that respondents have, through an independent survey, or in any other manner, determined the prices being charged, in the trade area in which the representation is made, for merchandise identical to that being advertised by respondents unless respondents, prior to making such representation, have determined, or caused to be determined, that the identical merchandise is being sold by the principal retail outlets in the trade area wherein the advertisement is published at the represented prices and respondents maintain adequate records supporting such determination.

(8) Failing to maintain adequate records (a) which disclose the facts upon which any savings claims, including former pricing claims and comparative value claims and similar representations of the type described in Paragraph 7 of this order are based, and (b) from which the validity of any savings claims and similar representations of the type described in Paragraph 7 of this order can be determined.

(9) (a) Representing, directly or by implication, that any product or service is offered for sale when such offer is not a bona fide offer to sell said product or service.

(b) Using any advertising, sales plan or promotional scheme involving the use of false, misleading or deceptive statements or representations to obtain leads or prospects for the sale of any product.

(c) Making representations purporting to offer merchandise for sale when the purpose of the representation is not to sell the offered merchandise but to obtain leads or prospects for the sale of other merchandise.

(d) Disparaging, in any manner, or discouraging the purchase of any product advertised.

(10) (a) Representing, directly or by implication, that tires or any other articles of merchandise are guaranteed unless the nature and extent of the guarantee, the manner in which the guarantor will perform and the identity of the guarantor are clearly and conspicuously disclosed.

(b) Representing, directly or by implication, that guarantee adjustments will be made on a pro rata basis unless the allowance to the customer for the replacement tire is proportionately equal to the unused portion of the guarantee period.

(c) Failing to disclose in any statement of a tire guarantee that customers will be required to pay the applicable Federal excise tax on the replacement tire.

It is further ordered, That corporate respondent distributes a copy of this order to each of its operating divisions and departments and to the manager of each of its retail outlets.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents herein 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

DEJUR-AMSCO CORPORATION

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

Docket C-1787. Complaint, Aug. 27, 1970—Decision, Aug. 27, 1970

Consent order requiring a New York City distributor of magnetic tape recording dictation and transcription devices, principally under the trademark "Stenorette," to cease fixing its retail dealers' resale prices, imposing customer and territorial restrictions, and imposing on its dealers exclusive dealing requirements and other anticompetitive restraints.