

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE  
CLAYTON ACT

*Docket C-1827. Complaint, Nov. 27, 1970\*—Decision, Nov. 27, 1970\*\**

Consent order requiring two Houston, Tex., distributors of cleaning compounds, polishes, shine kits and related products to cease fixing resale prices for its products, imposing customer, advertising and sales outlet restrictions on its distributors, discriminating in price between competing resellers, and participating in any successive recruitment of other participants in any multilevel marketing scheme; respondents are also required to affirmatively grant customers the right to determine their own resale prices.

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\* For complaint in this case, see consolidated complaint *In the Matter of Chemical Associates, Inc., et al.*, Docket No. C-1826, p. 1500 herein.

\*\* Reported as amended by Commission's order of February 18, 1971, by amending Part III, Paragraph number 1, of the order.

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## 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 Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended, and with Section 2(a) of the Clayton Act, as amended; 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 said 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 Acts, 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 Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondents William O. Menefee and William J. Southwell were officers or directors of Chemical Associates, Inc., at the time that the agreement was executed and formulated, directed and controlled the policies, acts and practices 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

## I

*It is ordered,* That respondents William O. Menefee and William J. Southwell, individually, their agents, representatives and employees, directly or indirectly, or through any corporate or other device in connection with the offering for sale, sale, or distribution of any

goods or commodities in commerce, or in connection with any multi-level marketing program or any other kind of merchandising, marketing or sales promotion program in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Clayton Act, shall forthwith cease and desist, directly or indirectly, from:

1. Entering into, maintaining, or enforcing any contract, agreement, understanding, marketing system, or course of conduct with any dealer or distributor of any goods or commodities to do or perform or attempting to do or perform any of the following acts, practices, or things:

(a) Fix, establish or maintain the prices, discounts, rebates, overrides, commissions, fees, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold.

(b) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct whereby said person in turn requires or coerces third parties to adhere to a course of conduct with fixes, establishes, or maintains the prices, discounts, rebates, overrides, commissions, fees, or other terms or conditions of sale relating to pricing upon which such goods or commodities may be resold.

(c) Refrain from selling any merchandise in any quantity to any specified person, class of persons, business, or class of businesses, or through the facilities of any business, class of businesses, or other means of distribution: *Provided, however*, That nothing in this order shall be construed or applied to prohibit respondent from making bona fide unilateral selection of respondents' customers on the basis of their own criteria and judgment, or from recommending reasonable criteria and standards to their distributors for the selection of customers, said criteria and standards not violating the letter or spirit of any of the provisions of this order.

(d) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct whereby said person in turn requires or coerces third parties to adhere to a course of conduct requiring, inducing, or coercing any distributor to refrain from selling any merchandise in any quantity to any specified person, class of persons, business, or class of business, or through

the facilities of any business, class of business, or other means of distribution.

(e) Prevent any distributor or dealer of any of corporate respondent's products from advertising either his distributorship or said products, in any media of his choosing, or preventing any distributor or dealer from employing the trade name or any of the trademarks of corporate respondent in said advertising: *Provided, however*, Respondents may take such steps as may be necessary to protect its public image and rights under the trademark and copyright laws.

(f) Require or coerce any person to enter into a contract, agreement, understanding, marketing system, or course of conduct which discriminates, directly or indirectly, in the price of any merchandise of like grade and quality by selling to any purchaser, directly or indirectly, or causing to be sold to any purchaser, at net prices higher than the net prices charged any other purchaser, who competes in the resale or distribution of such merchandise with the purchaser paying the higher price.

2. Discriminating, directly or indirectly, in the price of any merchandise of like grade and quality by selling to any purchaser at net prices higher than the net price charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price, or with customers of the purchaser paying the higher price; *Provided, however*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacturer, sale or delivery: *And provided further*, That all other defenses available in law to a charge of price discrimination shall be available to the respondent company.

3. Discriminating, directly or indirectly, in the terms or conditions of sale of any merchandise of like grade and quality by selling to any purchaser upon terms or conditions of sale less favorable than the terms or conditions of sale upon which such products are sold to any other purchaser who competes in the resale of respondent's products with the purchaser who is afforded less favorable terms or conditions of sale or with a customer of the purchaser afforded the less favorable terms or conditions of sale: *Provided*, That all defenses available in law to a charge of discrimination in terms and conditions of sale shall be available to the respondent company.

4. Entering into, maintaining, or enforcing any contract, agreement, understanding, marketing system, or course of conduct with any dealer or distributor of any goods or commodities, or with any other person, to require any person to pay any sum of money to any other distributor or dealer or other person when not in exchange for any products or merchandise actually purchased.

5. Offering to pay or paying, or authorizing, suggesting or requiring the payment of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration or thing of value to any participant dealer or distributor, directly or indirectly, except for and in consideration of bona fide services actually rendered to the respondent, participant, dealer or distributor paying for same, in connection with the sale or purchase of goods, wares, or merchandise, with the amount of compensation for such services rendered having a direct, actual and bona fide relationship to the services performed: *Provided, however*, That respondents may not pay, grant, suggest or authorize the payment of anything of value to any participant, dealer or distributor for recruiting participants, dealers or distributors except as follows:

(i) Said payment or other consideration is a one-time only reward for each distributor or dealer recruited;

(ii) The amount of said payment or other consideration may be either a sum certain or an amount based upon actual and verified retail sales to the consuming public by the recruited distributor, not exceeding six (6) months in duration; and

(iii) The recruiting or encouragement of recruiting does not contravene any of the provisions of Parts II and III of this order.

6. Requiring any of its distributors to obtain the prior approval of respondents for any advertising or promotion of the product or his distributorship when the distributors use their own funds for advertising: *Provided, however*, That nothing contained herein shall prohibit respondents from furnishing its distributors with suggested forms of advertising which do not otherwise contravene the law or the letter or spirit of any of the provisions of this order: *And provided further*, Respondent may take such steps as may be necessary to protect its public image and rights under the trademark and copyright laws.

7. Engaging, either as part of any contract, agreement, under-

standing, or courses of conduct with any distributor or dealer of any goods or commodities, or individually and unilaterally, in the practice of:

(a) Publishing or distributing, directly or indirectly, any list, order form, report form, or promotional material which employs resale prices for such goods or commodities without stating clearly and visibly in connection therewith the following statement:

"The prices quoted herein are suggested prices only.

All distributors and dealers are free to determine their own resale prices."

(b) Publishing or distributing, directly or indirectly, any sales manual or instructional material which employs sample resale prices for such goods or commodities without stating clearly and visibly in connection therewith that said price upon which such goods or commodities may be resold are not binding upon the distributor or dealer.

(c) Publishing or distributing, directly or indirectly, except as may be expressly *provided* herein, any override whether required, recommended or suggested, to be paid by one distributor or dealer or class of distributors or dealers to any other distributor or dealer or class of distributors or dealers.

## II

*It is further ordered*, That the aforesaid respondents and their officers, agents, representatives, employees, successors and assigns, in connection with the advertising, offering for sale or sale of products, franchises or distributorships, or with the seeking to induce or inducing the participation of persons, firms or corporations therefor, in connection with any multilevel marketing program or any other kind of merchandising, marketing or sales promotion program, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, directly or indirectly, from:

1. Operating or participating in the operation or suggested operation of any program or plan wherein the financial gains to the participants, other than remuneration from the retail sales of respondent's products, is or may be dependent in any manner and to any degree upon the continued, successive recruitment of other participants, except as expressly *provided* herein.

2. Requiring that prospective participants or participants in

respondent's said programs pay any consideration, either to respondents or to any other person, other than payment for the actual cost of reasonably necessary sales materials, and for products actually purchased in reasonable quantities, in order to participate in any manner therein.

3. Requiring, suggesting, using or participating in any multi-level marketing program, or any other kind of merchandising, marketing or sales promotion program, either directly or indirectly:

(a) Wherein any finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits inuring to participants therein are or may be dependent, in whole or in part, upon the element of chance dominating over the skill or judgment of the participants; or

(b) Wherein no amount of judgment or skill exercised by the participant has any appreciable effect upon any or all finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits which the participant may receive or be entitled to receive; or

(c) Wherein the participant is without that degree of control over the operation of such plan as to enable him to substantially affect the amount of any or all finder's fees, bonuses, overrides, commissions, cross-commissions, discounts, rebates, dividends or other compensation or profits which the participant may receive or be entitled to receive.

4. Representing, directly or by implication, that participants in respondents' multilevel marketing program, or any other kind of merchandising, marketing or sales promotion program, will earn or receive, or have the potential or reasonable expectancy of earning or receiving, any stated or gross or net amount, or representing in any manner the past earnings of participants, unless in fact the past earnings represented are those of a substantial number of participants in the community or geographic area in which such representations are made, accurately reflect the average earnings of these participants under circumstances similar to those of the participant or prospective participant to whom the representations are made, and actually resulted from predominant elements of skill and judgment rather than chance.

5. Representing, directly or by implication, that it is easy for participants to recruit or retain persons who will invest or par-

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ticipate in respondents' multilevel marketing program or other kind of merchandising marketing or sales promotion program, either as distributors, dealers, franchisees, wholesalers or sales personnel.

*It is further ordered,* That respondent Chemical Associates, Inc., shall continue to offer to buy back saleable and usable merchandise purchased by any of its distributors at not less than cost less 15 percent.

## III

*It is further ordered,* That respondent Chemical Associates, Inc., within sixty (60) days from the effective date of this order shall:

1. Mail or deliver a conformed copy of this order to cease and desist to all present distributors, sales personnel or other persons engaged in the sale or distribution of respondents' products or services, or in the participation of respondents' merchandising programs.

2. Offer distributorships or dealerships to any former distributor or dealer who was terminated or suspended by respondent corporation for the violation of any rule, regulation or policy which contravenes any of the provisions of this order.

*It is further ordered,* That respondents or their representatives shall orally inform all prospective participants in respondents' multilevel merchandising program or any other kind of merchandising, marketing or sales promotion program, and to provide clearly and conspicuously in all contracts of participation, that the contract may be cancelled for any reason by notification to respondents or its representatives in writing within five (5) working days from the date of execution of such contract.

*It is further ordered,* That the respondents herein shall within sixty (60) days of the effective date 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, and subsequent thereto, for a period of three (3) years thereafter, provide the Commission with copies of all brochures, pamphlets, marketing plans, meeting scripts, film scripts, etc., that respondents may employ directly or indirectly in the promotion of their products.

*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.

## Complaint

## IN THE MATTER OF

## B. MARGARITIS FURS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS  
LABELING ACTS*Docket C-1828. Complaint, Dec. 1, 1970—Decision, Dec. 1, 1970*

Consent order requiring a New York City manufacturer of fur garments to cease misbranding, falsely invoicing and deceptively guaranteeing its fur products.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that B. Margaritis Furs, Inc., a corporation, and Gus Margaritis and Barbara Margaritis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 B. Margaritis Furs, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Gus Margaritis and Barbara Margaritis are officers of the corporate respondent. They formulate, direct and control the policies, acts and practices of the corporate respondent including those hereinafter set forth.

Respondents are manufacturers of fur products with their office and principal place of business located at 350 Seventh Avenue, New York, New York.

PAR. 2. Respondents are now and for some time last past have been engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms