

Final Order

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Chairman Kirkpatrick and Commissioner Dennison did not participate for the reason oral argument was heard and the opinion and original order were issued prior to their appointment to the Commission.

IN THE MATTER OF

YARDLEY OF LONDON, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1832. Complaint, Dec. 7, 1970—Decision, Dec. 7, 1970*

Consent order requiring a New York City distributor of toiletries, perfumes and cosmetics to cease fixing resale prices of its products, restricting persons to whom customers may resell, limiting territory in which customers may resell, reserving any firm as the exclusive sales customer of respondent, and cutting off supplies of any customer.

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 Yardley of London, Inc., sometimes hereinafter referred to as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), 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 Yardley of London, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. It maintains general offices, a production plant, and its principal warehouse at 700 Union Boulevard, Totowa, New Jersey. Its executive offices and salesrooms are located at 620-630 Fifth Avenue, New York, New York.

PAR. 2. Respondent purchases and imports essences and fragrances from its parent firm, Yardley and Company, Limited, London, England, for finishing in the United States into toiletries, perfumes and cosmetics which it distributes under the Yardley trade name. During the year 1967 respondent's estimated total volume of sales was in excess of \$25,000,000.

PAR. 3. Respondent distributes, offers to sell, and sells toiletries,

perfumes and cosmetics for both men and women (hereinafter "products") which are shipped from its warehouses in Totowa, New Jersey; Chicago, Illinois; Dallas, Texas; and Los Angeles, California; to a large number of customers located throughout the United States. At all times referred to herein there has been a constant and substantial flow of respondent's products shipped in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of its business, is in competition in commerce with other manufacturers and distributors of toiletries, perfumes and cosmetics, except to the extent that such competition has been lessened, restrained, or otherwise injured as hereinafter alleged.

PAR. 5. Respondent distributes its products through a network of company-employed salesmen who sell said products directly to retail outlets, or between about 1956 and early 1969, to wholesale sales representatives such as wholesale druggists and toiletry merchandisers. During 1965 and 1966 there were approximately 13,000 listed active customers of respondent in the United States, of which more than 12,000 were retail outlets and of which the remainder were wholesale sales representatives.

PAR. 6. Respondent's contracts, agreements, understandings, practices, and course of dealing with its wholesale sales representatives have included and have been conducted upon the following terms and conditions, among others:

1. Products were to be sold to retail dealers at 33-1/3 percent less than respondent's published retail fair trade prices, with no more than 2 percent cash discount, or, if offered for sale directly to consumers on racks or shelves controlled by a toiletry merchandiser, were to be prepriced according to respondent's retail fair trade prices.

2. Products were to be sold only to a specified class of retailers, such as drug stores (wholesale druggists) or food stores (toiletry merchandisers).

3. Products were not to be sold to any customer whose name was included on respondent's published "Wholesale Reservation List."

4. Products were to be sold only within the wholesale sales representative's regular trading area.

PAR. 7. Respondent has enforced the terms and conditions of its contracts, agreements, understandings, and methods of distribution through the use of the following acts and practices, among others:

1. It has periodically published and distributed to each of its wholesale sales representatives the "Wholesale Reservation List"

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containing names and addresses of direct-buying retail accounts located in the State (or States) in which the representative has its regular trading area.

2. It has accepted, entertained, and acted upon complaints from one customer concerning the pricing, selling practices or activities of other customers which do not conform with the terms and conditions listed in Paragraph Six above.

3. It has spied upon, observed and otherwise policed the selling practices and activities of its customers in order to ascertain whether or not they conform with the terms and conditions listed in Paragraph Six above.

4. Its sales representatives have called upon customers and discussed with them the distribution policies of respondent in order to attain a planned course of dealing.

5. It has systematically terminated its contractual relationships with and discontinued sales to customers who were reselling products to price-cutters or to retailers other than those to whom they were authorized to sell.

PAR. 8. During the time period between about 1960 and mid-1967, respondent has entered into and maintained a system of alleged "consignment" agreements with its wholesale sales representatives, including wholesale druggists and toiletry merchandisers. Said agreements and the acts and practices which have been engaged in pursuant thereto have been in furtherance of the restrictive distribution system and of the unreasonable restraints upon trade and the lessening of competition which have been alleged hereinabove.

PAR. 9. Respondent, in addition to its activities with its wholesale sales representatives, as aforesaid, has directly attempted to tamper with, fix, control and maintain the resale selling prices of retail dealers handling its products through use of the following acts and practices, among others:

1. It has issued and mailed to persons or firms located in States in which no "fair trade" obligation was binding upon them and who allegedly were cutting prices of Yardley products threatening letters warning of possible further action.

2. In its contacts with retail dealers it has discussed, contracted, agreed, and reached understandings concerning a requirement to maintain the suggested or fair trade prices established by respondent.

PAR. 10. As a result of the contracts, agreements, understandings, acts, practices, and course of dealing aforesaid:

1. The resale prices of respondent's products have been unlawfully fixed and maintained.

2. The free movement of respondent's products and the right of alienation of products purchased from respondent have been unreasonably restricted, lessened and restrained.

3. The sources of supply of respondent's products to numerous price-cutters and other retail outlets have been unfairly and illegally cut off or foreclosed.

4. Competition among respondent and its wholesale sales representatives in the distribution, offering for sale, and sale of respondent's products to numerous retail outlets has been artificially and unreasonably restricted, lessened and restrained.

PAR. 11. Respondent's contracts, agreements, understandings, acts, practices, and course of dealing, as aforesaid, constitute unfair methods of competition or unfair acts or 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has violated the said Act, and that complaint should issue stating its charges in that respect, having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having fully considered comments received from the public during said period, 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. Respondent Yardley of London, Inc., is a corporation which has its general offices and principal facilities at 700 Union Boulevard, Totowa, New Jersey, and maintains its executive offices and salesrooms at 620 Fifth Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Yardley of London, Inc., a corporation, its officers, representatives, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with the importation, manufacture, distribution, offering for sale and sale of toiletries, perfumes, and cosmetics, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, maintaining, continuing, or seeking to enforce any contract, agreement, understanding, or planned course of dealing to fix or maintain the resale prices of such products.

2. Limiting, restricting, or restraining the persons or firms to whom any customer may resell such products.

3. Limiting, restricting, or restraining the geographic area in which any customer may distribute, offer to sell, and resell such products.

4. Reserving any person or firm as the sole or exclusive customer of respondent, or seeking to prohibit any person or firm from competing with respondent in the offering for sale and sale of such products to any customer.

5. Discontinuing sales to, threatening to discontinue sales to, or seeking to cut off or foreclose sources of supply of such products to any person or firm who has lawfully acquired such products because of:

(a) The level of distribution at which he operates;

(b) The class of trade to whom he offers to sell and sells;

(c) The prices at which he distributes, offers to sell, and sells such products;

(d) The marketing or geographic area in which he distributes, offers to sell, and sells such products;

(e) The prices at which his customers offer to sell and sell such products.

Provided, however, That nothing contained herein shall be interpreted so as to prohibit respondent from entering into and enforcing in the manner authorized by law a "fair trade" resale price maintenance program, in accordance with the provisions of the Miller-Tydings Act and the McGuire Act.

It is further ordered, That respondent Yardley of London, Inc. furnish a copy of this order to all presently franchised retail outlets or other customers and to all employees, agents, or representatives engaged in sales activities, within ninety (90) days from the date hereof.

It is further ordered, That respondent Yardley of London, Inc., notify the Commission at least thirty (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 of 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 respondent Yardley of London, Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
CARNATION COMPANY

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

Docket C-1833. Complaint, Dec. 8, 1970—Decision, Dec. 8, 1970

Consent order requiring a major seller of food products with headquarters in Los Angeles, Calif., to cease making unwarranted nutritional claims in advertising its "Carnation Instant Breakfast."