

It is further ordered, that
desist issued September 19, 1962, November 19, 1962, November 27, 1962, December 5, 1962, and December 13, 1962, be, and they hereby are, rescinded as to all respondents and that the complaints as to such respondents be, and they hereby are, dismissed.

IN THE MATTER OF
SUPERMARKET BROADCASTING NETWORK, INC.,
ET AL.

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

Docket C-1843. Complaint, Jan. 6, 1971—Decision, Jan. 6, 1971

Consent order requiring a Chicago, Ill., corporation operating a system of sound broadcasts in retail outlet stores to cease failing to offer or furnish its services to competitors of its retail store customers on a proportionally equal basis, failing to offer its services to all firms supplying its retail store customers, and acting as an intermediary between suppliers and retail stores without making all advantages offered available to all other retail customers.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 45), by virtue of the authority vested in it by said Act, having reason to believe that the parties named in the caption hereof and hereinafter more particularly described and referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, as hereinafter more particularly described, 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 respect thereto as follows:

PARAGRAPH 1. Supermarket Broadcasting Network, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office located at 360 North Michigan Avenue, Chicago, Illinois. Respondent Super-

market Broadcasting Network, Inc., is known as and referred to herein as "SBN."

Respondent Robert E. Potter, Sr., is an individual and is now and during the times referred to herein has been the president and principal stockholder of the corporate respondent, Supermarket Broadcasting Network, Inc., with his principal office and place of business located at 360 North Michigan Avenue, Chicago, Illinois, and, as such, has directed, managed, and controlled the activities of the respondent corporation and has formulated the policies under which the acts and practices referred to herein have been conducted.

PAR. 2. DEFINITIONS. As used herein, the following words and phrases shall have the principal meanings and definitions indicated.

PARTICIPATING SUPPLIER-ADVERTISERS—include those engaged in the manufacture, packaging, sale and distribution of products and commodities, both edible and nonedible, normally sold in grocery stores, including supermarkets, and who contract with respondent SBN for the services and facilities provided by respondent SBN in broadcasting commercial announcements as hereinafter more particularly described.

WHOLESALE GROUPS—a central wholesaler who buys products from suppliers and who sells and distributes said products to retailers who in turn resell to consumers, and the retailers who have affiliated with the central wholesaler for the purposes of cooperative buying and cooperative merchandising.

PARTICIPATING NETWORK UNIT—any wholesaler group, as hereinbefore defined, or any unaffiliated retailer contracting with respondent SBN for the services, facilities, and payments as hereinafter more particularly described.

PARTICIPATING NETWORK OUTLET—a retail store, physically equipped with and using the broadcast equipment of the respondent SBN in the manner hereinafter described.

PAR. 3. Respondent SBN is now and for many years has been engaged in the operation of a system of sound broadcasts in participating network outlets (retail stores), by which music, news, public interest announcements and, particularly, commercial messages are disseminated to shoppers.

In connection with its business, respondent SBN solicits, enters into and executes contracts and agreements with wholesaler groups and sometimes with independent, non-affiliated retailers (participating network units), which contracts and agreements provide that SBN supplies the following services and facilities in connection with

the sale and offering for sale of participating supplier-advertisers' products:

1. SBN installs the sound broadcasting equipment in participating network outlets.

2. SBN arranges for and provides the in-store sound broadcasts by radio transmissions or audio tapes of background music, news, public interest announcements, and, particularly, commercial messages featuring the products of participating supplier-advertisers.

Said contracts also provide that the participating network outlet operators shall promote the products of participating supplier-advertisers by newspaper advertisements, hand bills, and in-store displays, in addition to permitting commercial messages on the sound broadcasts.

In addition to the foregoing the contracts and agreements with the participating network units typically provide that the participating network units will receive payment of money as consideration for the services or facilities furnished by or through the participating network unit in connection with the SBN program.

In connection with its business, respondent SBN solicits, enters into, and executes contracts and agreements with participating supplier-advertisers whose products are sold in the participating network outlets, which contracts and agreements provide that said participating supplier-advertisers pay SBN for the aforementioned services and facilities furnished by SBN, through SBN and by the participating network units.

Typically, the contracts between SBN and the participating supplier-advertisers provide that SBN will offer its services to all wholesalers and retail food outlets in the areas in which it has contracted to perform with the participating network units.

Respondent SBN's business is substantial. In 1966 it received approximately \$896,000 from suppliers for advertising their products in about 1300 participating network outlets located in about 25 States of the United States.

PAR. 4. In the course and conduct of its business, respondent SBN has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent SBN sends or causes to be sent, equipment, advertising materials, payments, communications, contracts, invoices and other items to and from its home offices in the State of Illinois to and from the many other States of the United States in which the participating network units and outlets are located. Respondent SBN's officers, employees and agents travel extensively from many of the States in the United

States to many other States of the United States in the course of the business of respondent SBN, and respondent SBN receives at its home offices in the State of Illinois, communications, payments of money, advertising copy and other items from many of its participating supplier-advertisers located in many of the other States of the United States.

In addition, many of the products sold and promoted in the participating network outlets under the SBN program and contracts as hereinbefore described have been transported from many States of the United States in which said products were manufactured, or prepared, or warehoused to many other States of the United States in which said participating network outlets are located.

PAR. 5. Many of the participating network outlets are in competition with other retailers, and many of the wholesalers participating with respondent SBN as participating network units are in competition with other wholesalers in the purchase, sale and distribution of food, grocery, and non-edible household products.

PAR. 6. In the course and conduct of its business in commerce and particularly since 1962, respondent SBN has been the principal instrumentality and factor in negotiating and executing promotional and advertising arrangements between participating supplier-advertisers and participating network units, as hereinbefore defined wherein:

A. Participating supplier-advertisers have paid or contracted for the payment of something of value to respondent SBN for the benefit of customers of such participating supplier-advertisers as compensation or in consideration for services and facilities furnished by or through said customers in connection with the sale or offering for sale of such participating supplier-advertisers' products by such customers, and wherein

B. Participating supplier-advertisers have contracted to furnish, have furnished, and contributed to the furnishing to customers, through respondent SBN of services and facilities connected with the sale or offering for sale of such participating supplier-advertisers' products

when respondents knew or should have known that the said payments for, or the said furnishing of, services and facilities were discriminatory in that neither SBN nor the participating supplier-advertisers offered and other wise made available or accorded such payments, for, or the furnishing of, services and facilities to all of said participating supplier-advertisers' customers, in-

cluding those who do not purchase directly, competing with those so favored.

PAR. 7. By conceiving, authorizing and initiating the contracts with the participating network units and with the participating supplier-advertisers as aforesaid, respondent SBN controlled and determined the terms, conditions, rates, amounts, times and territories of promotional arrangements between participating supplier-advertisers and their participating customers.

Although respondent SBN in many instances agreed with participating supplier-advertisers to offer the SBN program to all of the participating supplier-advertisers' customers competing with the participating network outlets in the distribution of said participating supplier-advertisers' products, respondent SBN failed to offer and otherwise make available on proportionally equal terms the SBN program to all of said participating supplier-advertisers' other customers, including those who do not purchase directly, who, in fact, competed with the favored.

In addition respondent SBN, knew or should have known that many of SBN's participating supplier-advertisers did not themselves offer and otherwise make available on proportionally equal terms the benefits of the payments, services and facilities of the SBN program to all of their other customers, including those who do not purchase directly, competing with their SBN participating customers in the distribution of such participating supplier-advertisers' products.

As a result, respondent SBN knew or should have known that the benefits of the payments, services and facilities of the SBN program were not offered, accorded and otherwise made available to all of said participating supplier-advertisers' customers, including those who do not purchase directly, competing in the distribution of said participating supplier-advertisers' products.

PAR. 8. The acts and practices of respondents, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and 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 Restraint of

Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 5 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 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 Supermarket Broadcasting Network, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 360 North Michigan Avenue, Chicago, Illinois.

Respondent Robert E. Potter, Sr., is an officer of said corporation and his address is 360 North Michigan Avenue, Chicago, Illinois.

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 respondent Supermarket Broadcasting Network, Inc., a corporation, and its officers, and respondent Robert E. Potter, Sr., individually and as an officer of respondent corporation, and their representatives, agents, and employees, directly, indirectly, or through any corporate or other device, in or in connection with their business in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier for the benefit of such supplier's customer, for the purpose of compensating such

supplier's customer for display and promotional services or facilities furnished by or through said supplier's customers, or for the purpose of furnishing display or promotional services and facilities, including background music and promotional announcements to said supplier's customers, in connection with the processing, handling, sale or offering for sale of such supplier's products by such customer, when respondents know or should know that such compensation, consideration, services, or facilities are not affirmatively offered, accorded, and otherwise made available by such supplier or respondents on proportionally equal terms to all the supplier's customers, including those who do not purchase directly from such supplier, competing with the favored customer in the sale and distribution of such supplier's products.

2. Paying or contracting for the payment of anything of value to or for the benefit of any customer of a supplier, as compensation or in consideration for any services or facilities furnished by or through such customer, or furnishing, contracting to furnish, or contributing to the furnishing of any service or facility, including background music and promotional announcements, to any customer of such supplier, in connection with the processing, handling, sale or offering for sale of any of such supplier's products, unless such payment, compensation, consideration, services or facilities are affirmatively offered, accorded, and otherwise made available to all of such supplier's customers, including those who do not purchase directly from such supplier, competing with the favored customer in the sale and distribution of such supplier's products.

3. Acting as an intermediary in transactions between suppliers and their customers as described in the complaint unless respondents affirmatively inform all such suppliers of such supplier's primary responsibility for seeing that the allowances they grant, or the services or facilities they furnish directly or indirectly in connection with the promotion of their products, to or for the benefit of some of their customers, are made available to all other customers, including those buying indirectly, who compete in the resale of their products with customers so favored.

It is further ordered, That respondents 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 or dissolution of

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subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the 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 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.