

upon it or this order respondent herein shall deliver to all persons purchasing its amateur radio equipment for resale a letter to such persons describing the manner and form of respondent's compliance with this order.

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

IN THE MATTER OF

HOWARD-GIBCO CORPORATION

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

Docket C-1896. Complaint, Apr. 8, 1971—Decision, Apr. 8, 1971

Consent order requiring a Texarkana, Texas, operator of retail chain stores in four Southwestern States to cease selling its fluid milk at a price less than the cost thereof to respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Section 41) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Howard-Gibco Corporation, a corporation, hereinafter referred to as "Respondent," has violated the provisions of Section 5 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 with respect thereto as follows:

PARAGRAPH 1. Respondent 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 104 Smelser Street, Texarkana, Texas.

PAR. 2. Respondent, as of May 11, 1970, owned and operated 26 retail stores in the States of Arkansas, Oklahoma, Missouri and Texas. Under a franchise agreement with Gibson Products Company, 1228 Ledbetter Avenue, Dallas, Texas, Respondent is permitted to use certain trademarks and service marks owned by said Gibson Products Company. Such trademarks and service marks include: Gibson, Gibson's, Gibson Products Company (sometimes expressed "Co.") and Gibson Discount Center. Respondent's gross sales for its fiscal years ending January 31 were: \$17,763,481, in 1967; \$25,219,018, in 1968; and \$37,481,632 in 1969.

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PAR. 3. Respondent's retail stores are now, and for many years past have been, offering for sale and selling to the general public in the four state area a variety of items, including: sporting goods, drugs, dry goods, jewelry, toys, hardware, automotive supplies, housewares, stationery, cameras and grocery products. Included among the grocery products respondent offers for sale and sells to the general public are fluid milk and other dairy products. As used in this complaint, fluid milk is limited to regular milk and such variations of low-fat milks as two percent butterfat and skim milks. It does not include such byproducts as chocolate milk and butter-milk.

PAR. 4. In its sale of fluid milk from its various retail stores, respondent is now, and for many years past has been, causing the same to be transported from the state where such fluid milk is processed or stored in anticipation of sale to respondent's retail stores in different states. Respondent also causes, and has caused, fluid milk to be transported from processing plants and storage depots to respondent's stores located in the same state.

Respondent is now, and for many years past has been, causing many of the other items mentioned in Paragraph Three to be transported from manufacturing and processing plants to its retail stores located in different States. The purpose of respondent's below cost selling practices, as described in Paragraph Five, is to encourage the general public to patronize its retail stores and purchase such other items.

All of the matters and things, including the acts, practices, sales and distribution involving respondent's retail stores, were and are performed and done in a constant current of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its business in commerce, respondent has, on a recurring basis, offered to sell and sold fluid milk to the general public at below cost prices with the intent and purpose, or under circumstances where the effect may be to injure, restrain, suppress or destroy competition in the sale of fluid milk between respondent's retail grocery stores and competing retail grocery stores and home delivery dairies and also under circumstances where the effect may be to substantially lessen competition or tend to create a monopoly among wholesale dairies.

For example, during the period November 24-29, 1969, respondent's retail store in Arkadelphia, Arkansas purchased dairy products at a net acquisition cost of \$3,377 and sold them \$422 below said acquisition cost. The loss was caused by respondent's offering to sell

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and selling fluid milk at below cost prices. Regular milk, for example, costing respondent 46 cents per half gallon unit, was advertised and sold to the general public for as low as 39 cents. Such below cost sales injured, or had a tendency to injure: competing grocery retail stores, dairies forced to reduce their wholesale prices to assist grocery retailers in their attempt to compete with respondent, and home delivery dairies selling directly to the general public.

PAR. 6. The effect and result of the pricing practices of respondent, as alleged above, has been or may be to substantially lessen competition in the distribution and sale of fluid milk: to the injury and prejudice of the general public; to the injury and prejudice of retail grocery stores competing directly with respondent's stores; and to the injury and prejudice of wholesale and home delivery dairies selling in the same markets, as described above. Such pricing practices constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning 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 a violation of the Federal Trade Commission Act; and

The respondent 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, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and considered comments regarding the decision, now in further conformity with the procedure prescribed in § 2.34 (b) of its Rules, the Com-

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mission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Howard-Gibco Corporation, 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 104 Smelser Street, Texarkana, Texas.

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, Howard-Gibco Corporation, a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of its fluid milk in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Selling or offering to sell its fluid milk at a price less than the cost thereof to respondent with the purpose or intent, or where the effect may be, substantially to lessen competition or tend to create a monopoly in the sale of fluid milk.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of the managers and assistant managers of each of its retail stores.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure 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 respondent herein 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 of its compliance with this order.

IN THE MATTER OF

McDONALD'S CORPORATION, ET AL.

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

Docket C-1897. Complaint, Apr. 12, 1971—Decision, Apr. 12, 1971

Consent order requiring a major chain of hamburger restaurants with headquarters in Chicago, Ill. to cease failing to award its prizes as repre-