

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

Docket C-1944. Complaint, June 14, 1971—Decision, June 14, 1971

Consent order requiring a Minneapolis, Minn., national merchandising company to cease fixing and maintaining prices to be charged by one of its women's and children's ready-to-wear dealers and requiring them to handle only respondent's products.

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 the party respondent named in the caption hereof, and hereinafter more particularly described, has been, and is now, violating the provisions of Section 5

of the Federal Trade Commission Act (38 Stat. 719, as amended; 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 with respect thereto as follows:

PARAGRAPH 1. Respondent, Gamble-Skogmo, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. Its principal executive offices are at 5100 Gamble Drive, Minneapolis, Minnesota. Respondent and its merchandising subsidiaries sell household, automotive and personal merchandise, *inter alia*, at retail through company-owned stores, through mail-order catalogs and at wholesale to independent dealers. Gamble-Skogmo's gross sales for the 53 weeks ending January 31, 1970, were \$1,257,580,000. In 1969, respondent was the fourteenth largest retailing company in the United States.

In January 1966, Gamble-Skogmo merged with Founders Incorporated, a Delaware corporation. By means of this merger, Gamble-Skogmo acquired control over and ownership of Mode O'Day Company, a division of Founders Incorporated and Mode O'Day Frock Shops of Hollywood, a subsidiary of Founders Incorporated. Since January 1966, Mode O'Day Company has operated as a division and Mode O'Day Frock Shops of Hollywood has operated as a subsidiary of Gamble-Skogmo, with their principal offices located at 2130 North Hollywood Way, Burbank, California. On January 30, 1971, Mode O'Day Frock Shops of Hollywood was merged into Gamble-Skogmo.

Gamble-Skogmo's division, Mode O'Day Company, manufactures a low-priced line of dresses, lingerie and sportswear in nine factories located in Illinois, Missouri, California, Iowa, Kansas, Nebraska and Utah. In addition to the manufactured items, Mode O'Day Company purchases certain ladies accessories from other manufacturers. This merchandise is sold by approximately 660 dealer stores located in approximately 29 States and also is sold by approximately 55 company-owned stores. Sales for the 53 weeks ending January 31, 1970, for Mode O'Day Company, a division of respondent Gamble-Skogmo, were approximately \$30,000,000.

PAR. 2. Mode O'Day dealers are individuals, partnerships or corporations carefully selected by respondent for the purpose of selling to the public merchandise under the Mode O'Day name. Respondent selects store sites, grants each dealer a license to use the Mode O'Day name as his trade name at a particular location, negotiates lease agreements, improves and fixtures the premises, provides accounting systems, advertising, displays and other services, and supplies on

consignment various types and quantities of merchandise preticketed with retail prices.

The dealer pays the respondent for the lease improvements and fixture costs advanced by respondents; takes delivery of merchandise from respondent under the terms of a "License and Consignment Agreement" under which title to the merchandise remains in the respondent until sold by the dealer; pays for the merchandise upon sale, if sold; pays certain operating expenses, including rent, utilities and insurance, and bears certain risks normally associated with an independent businessman; but other such risks, including the risks of unsold merchandise, markdowns, and damaged or out-of-season goods, are borne by respondent.

The typical Mode O'Day dealer occupies a store with a small square footage. The majority of the approximately 660 dealers are women, such as retired school teachers, widowed ladies, former employees of dress shops and department stores, who are desirous of operating their own business.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent has caused and now causes various products to be shipped and transported from states of manufacture to its stores located in states other than the states where said shipments originate.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated, as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the manufacture, distribution and sale of products similar to those described hereinabove.

PAR. 5. Respondent, in combination, agreement, understanding and conspiracy with its Mode O'Day dealers, is now and for the last several years has been establishing, maintaining and pursuing a planned course of action which:

(a) Fixes and maintains certain specified prices at which respondent's products are sold to the public;

(b) Prevents its Mode O'Day dealers from selling or dealing in products of a competitor or competitors of respondent.

PAR. 6. By means of all the aforesaid acts and practices, and more, respondent in combination, agreement, understanding and conspiracy with its Mode O'Day dealers, establishes, maintains and pursues a planned course of action to fix and maintain prices at which respondent's products will be resold; and prevents dealers from selling or dealing in the products of respondent's competitors.

PAR. 7. The acts and practices of respondent by and through combining, agreeing, understanding, and conspiring with its Mode O'Day dealers, as hereinabove described, for the last several years has been and is now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the sale of respondent's products; and constitutes unfair methods of competition in commerce, all in derogation of the public interest 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 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 Section 5 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 complaint to issue herein, 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 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 Gamble-Skogmo, Inc., 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 5100 Gamble Drive, Minneapolis, Minnesota. Mode O'Day Company, with its office and principal place of business located at 2130 North Hollywood Way, Burbank, California, is a division of respondent, Gamble-Skogmo, Inc.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That respondent, Gamble-Skogmo, Inc., a corporation, its officers, and representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale or for consignment or in connection with the sale or consignment of any product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into any agreement, combination, understanding, or conspiracy with any Mode O'Day dealer which fixes or maintains or has the effect of fixing or maintaining prices to be charged by Mode O'Day dealers for any product.

2. Entering into any agreement, combination, understanding, or conspiracy with any Mode O'Day dealer which requires or has the effect of requiring, any Mode O'Day dealer to purchase, distribute, or sell only products manufactured, sold or supplied by the respondent.

This order shall not prevent respondent from operating under fair trade agreements, where applicable and legal.

II

It is further ordered, That within forty-five (45) days from the issuance of this order that respondent shall notify each Mode O'Day dealer by letter that:

- (1) He is free to obtain merchandise of the type customarily sold in women's and children's ready-to-wear stores from any source of his selection and to sell it in the same store in which Mode O'Day merchandise is sold; provided that the dealer shall identify such merchandise as non-Mode O'Day-supplied merchandise; and

- (2) He is free to sell Mode O'Day products at any price he wishes; subject, only, to products being sold under any lawful fair trade program.

III

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

IV

It is further ordered, That respondent 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

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

V

It is further ordered, That respondent within sixty (60) days after the issuance of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has