

DRUG FAIR, INC., TRADING AS DRUG FAIR

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

Docket C-1987. Complaint, July 23, 1971—Decision, July 23, 1971

Consent order requiring a chain of retail drugstores with headquarters in Alexandria, Va., to cease preticketing private brand merchandise with any stated price, using the words "SUMMER DISCOUNTS" and other special words unless the price is an actual discount, misrepresenting that the customer is afforded a savings, and failing to maintain adequate records to support savings claims.

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 Drug Fair, Inc., a corporation, trading as Drug Fair, and certain subsidiary corporations of Drug Fair, Inc., hereinafter referred to as respondents, have violated the provisions 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 in that respect as follows:

PARAGRAPH 1. Respondent Drug Fair, Inc., trading as Drug Fair, is a corporation organized, existing and doing business under and by

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virtue of the laws of the State of Maryland, with its principal office and place of business located at 6315 Bren Mar Drive, in Alexandria, Commonwealth of Virginia. Respondent from its aforementioned principal place of business is responsible for all the acts and practices of the aforementioned subsidiary corporations hereinbefore referred to as respondents in this complaint.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the operation of a chain of retail drug stores and in the advertising, offering for sale, and sale of drugs, cosmetics, film, developing and printing film and other articles of merchandise and service to the public, at retail.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its said merchandise to be shipped from its principal place of business in the Commonwealth of Virginia to its retail outlets located in various other States of the United States and in the District of Columbia, and has operated retail drug stores wherein its said goods and services have been sold and distributed wholly within the geographical confines of the District of Columbia; and has advertised its merchandise and services in newspapers and by radio and television circulated, distributed and transmitted among and between the several states and the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its merchandise, respondent has caused certain of its private brand merchandise to be preticketed with various price amounts and has made, and is now making, numerous statements and representations respecting the selling price and savings for such articles and other non-preticketed merchandise and services in advertisements inserted in newspapers of general interstate circulation, by means of radio and television broadcasts, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

ANNIVERSARY SALE * * *
AUTOMOTIVE SPECIAL * * *
2.50
BUCKINGHAM
5-qt. SAE 10W30
MOTOR OIL
99¢ * * *

SUMMER CLEARANCE * * *
69¢ DRUG FAIR
SUPER STAINLESS
DOUBLE EDGE
BLADES
PACK OF 5
48¢ * * *

SUMMER DISCOUNTS * * *

1.09
 DRUG FAIR
 STAINLESS
 DOUBLE EDGE
 BLADES
 10's
 88¢ * * *

When you pick up your
 finished prints
 we will give you a
 FREE ROLL OF KODAK FILM
 for each and every
 roll you had
 developed and printed.

89¢ DRUG FAIR
 INJECTOR
 BLADES
 64¢

FREE
 KODAK
 FILM

7 Stainless injector blades * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent has represented, and is now representing, directly or by implication, that:

1. The preticketed prices shown on respondent's razor blades and motor oil are the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business.

2. The advertised preticketed prices for respondent's razor blades and motor oil are the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and that purchasers save the difference between said higher preticketed prices and respondent's advertised selling price.

3. Each of the articles of merchandise offered for sale in the advertisements bearing the words "Summer Discount," "Holiday Discount," "Summer Clearance," "Automotive Special," or other words of similar import and meaning, were being offered for sale at special or reduced prices from the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and that purchasers realized a savings between respondent's regular price and its advertised price for such merchandise.

4. Customers will receive a free roll of Kodak film for each and every roll of film developed and printed.

PAR. 6. In truth and in fact:

1. The preticketed prices shown on respondent's razor blades and motor oil are not the prices at which respondent has made a bona

fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business.

2. The advertised preticketed prices for respondent's razor blades and motor oil are not the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and purchasers do not save the difference between the higher preticketed prices and respondent's advertised selling price.

3. Each of the articles of merchandise offered for sale in the advertisements bearing the words, "Summer Discount," "Holiday Discount," "Summer Clearance," "Automotive Special," or other words of similar import and meaning were not being offered for sale at special or reduced prices from the price at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and purchasers do not realize a savings between respondent's regular price and its advertised price for such merchandise.

4. Customers do not receive a free roll of Kodak film for each and every roll developed and printed; the developing and printing charges include the cost of the replacement roll of film.

Therefore, the aforesaid statements, representations, acts and practices were, and are, false, misleading and deceptive.

PAR. 7. In the conduct of its aforesaid business and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising, offering for sale and sale of merchandise and services of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public concerning the savings available to them on respondent's merchandise and, more generally, to mislead them into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's merchandise and services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of respondent as set forth above were, and are, all to the prejudice and injury of the public and of

respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington Area Field Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation 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 and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, 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 Drug Fair, Inc., trading as Drug Fair, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 6315 Bren Mar Drive, in Alexandria, Commonwealth of Virginia. Respondent from its aforementioned principal place of business is responsible for all the acts and practices of its subsidiary corporations.

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 Drug Fair, Inc., a corporation, and its officers, and its subsidiaries and their officers, trading as Drug Fair, or under any other trade name or names and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale of drugs, cosmetics, film, developing and printing film or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing private brand merchandise with any stated price, or representing, directly or by implication, that any price amount is respondent's regular price for any article of merchandise unless said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent, regular course of its business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison might be based.

2. Using the words "SUMMER CLEARANCE," "SUMMER DISCOUNTS," "SPECIAL," or any other word or words of similar import or meaning unless the price advertised for any of respondent's merchandise being offered for sale constitutes a reduction in an amount not so insignificant as to be meaningless, from the actual bona fide price at which the advertised merchandise was sold or offered for sale to the public on a regular basis by respondent for a reasonably substantial period of time in the recent course of its business: *Provided, however*, That respondent may use such words or expressions of similar import, as mentioned above, in advertising or other promotional materials containing non-sale items if clear and conspicuous disclosure is made in immediate conjunction with said representations that non-sale items are contained therein and if said non-sale items are distinctively identified.

3. Representing, in any manner, that by purchasing any of respondent's merchandise customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of its business.

4. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claims, including former pricing claims, sale claims and similar representations of the type as set forth in Paragraphs One through Three of this order are based, and (b) from which the validity of any savings claim, including former pricing claims, sales claims and similar representations of this type described in Paragraphs One through Three of this order can be determined.

5. Misrepresenting in any manner, the price at which any of respondent's merchandise is sold at retail or the savings afforded in the purchase thereof.

6. Representing, directly or indirectly, that any article of merchandise is being given free or without charge or cost or as a gift, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately for a substantial period of time in the recent and regular course of respondent's business.

It is further ordered, That respondent deliver a copy of this order to all present and future personnel of respondent engaged in offering for sale, or sale of any product or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

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

It is further ordered, That respondent 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 subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the acts and practices of respondent Drug Fair, Inc.'s, subsidiaries, unnamed herein, will be subject to the terms and provisions of this order just as if the respondent Drug Fair, Inc.'s, said unnamed subsidiaries were individually named herein.

It is further ordered, That the 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 in which it has complied with this order.

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IN THE MATTER OF

UNION CARBIDE CORPORATION

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

Docket 8811. Complaint, Mar. 25, 1970★—Decision, July 26, 1971

Consent order requiring a New York City manufacturer and seller of an automobile antifreeze described as Prestone antifreeze to cease advertising such product by presenting a demonstration which is performed unfairly or deceptively exaggerates or distorts the normal condition of use.

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 Union Carbide Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions 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 in that respect as follows:

PARAGRAPH 1. Respondent Union Carbide Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 270 Park Avenue, in the city of New York, State of New York.

PAR. 2. Respondent now, and for some time past, has been engaged in the manufacture, sale and distribution of an automobile antifreeze described as Prestone antifreeze, which, when sold is shipped to purchasers located in various States of the United States. Thus respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said automobile antifreeze in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobile antifreeze.

PAR. 4. In the course and conduct of its business, and for the pur-

*Reported as amended by hearing examiner's order of May 12, 1970. Respondents name was incorrectly stated in the complaint as "Union Carbide Company."