

New York City to cease advertising that its cigarettes are low in tar without

Complaint

79 F.T.C.

clearly disclosing material tar and nicotine content data; tar and nicotine content shall be determined by the testing methods employed by the Federal Trade Commission.

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 American Brands, Inc., a corporation, hereinafter referred to as the 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 as follows:

PARAGRAPH 1. Respondent American Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, New York, New York.

PAR. 2. Respondent is now, and for some time last past has been engaged in the advertising, sale and distribution of cigarettes including brands designated "Pall Mall Gold" 100's, "Pall Mall Menthol" 100's, and "Lucky Filters."

PAR. 3. Respondent transports and causes said cigarettes, when sold, to be transported from its places of business in the State of Virginia, and elsewhere, to purchasers thereof located in various other States of the United States and the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of its cigarettes, the respondent has made, and is now making numerous statements and representations in advertising including, but not limited to, advertisements broadcast on radio and television and inserted in magazines, newspapers and other advertising media with respect to the tar content of said cigarettes. Typical and illustrative of said statements and representations, but not all inclusive thereof are the following:

TELEVISION: Good Rich Flavor—Lower in "Tar".

RADIO: MAN: Here's good news for *particular* people * * * people who demand *both*—good taste and mildness from their cigarette. The newest U.S. Government figures show Pall Mall (Sic) Gold lower in tar than ever before. Lower in tar than the best selling filter king. You make out better at both ends

*Reported as amended by hearing examiner's order of October 24, 1969. Respondent's name was incorrectly stated in the complaint as "The American Tobacco Company."

with Big Tip Pall Mall (Sic) Gold, Tastier, Milder, Pall Mall (Sic) Menthol, too. NEWSPAPERS: And the average puff gives you 26 percent less "tar" than a non-filter cigarette.

By such statements and others of similar import comprising a comprehensive national advertising campaign and by failing to disclose facts which are material in the light of these statements and which consumers need to make an informed judgment, respondent has represented and created the impression that its cigarettes are low in tar when in truth and in fact its Pall Mall Gold 100's and Lucky Filters contain approximately 20 and 21 milligrams of tar, amounts which rank them 56th and 77th higher among the 122 brands tested than the brand containing the lowest tar level of 4 milligrams.

PAR. 5. By representing its cigarettes as being low in tar when in fact they contain five times the amount of tar found in the lowest yielding brand tested and rank above the midpoint on a tar-yield spectrum running from a low of 4 milligrams to a high of 36 milligrams, respondent has engaged in and practiced falsehood and deception.

PAR. 6. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and now is, in substantial competition, in commerce, with corporations, firms and individuals in the sale of cigarettes of the same general kind and nature as those sold by respondent.

PAR. 7. The use by respondent of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondent's product by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, 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 Commission having issued its complaint on September 29, 1969, charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and respondent having been served with a copy of that complaint; and

Decision and Order

79 F.T.C.

The Commission having duly determined upon motion duly certified to the Commission that, in the circumstances presented, the public interest would be served by waiver here of the provisions of Section 2.34(d) of its rules, that the consent order procedure shall not be available after issuance of complaint; and

Respondent and counsel for the complaint having thereafter executed an agreement containing a consent order, an admission by respondent of all jurisdictional facts set forth in the complaint, a statement that the signing of the agreement by respondent is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent American Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 245 Park Avenue, in the city of New York, State of 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

I

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

Stating in advertising that any cigarette manufactured by it, or the smoke therefrom, is low or lower in "tar" by use of the words "low," "lower," or "reduced" or like qualifying terms, unless the statement is accompanied by a clear and conspicuous disclosure of:

1. The "tar" and nicotine content in milligrams in the smoke produced by the advertised cigarette; and

2. If the "tar" content of the advertised brand is compared to that of another brand or brands of cigarette, (a) the "tar" and nicotine content in milligrams of the smoke produced by that brand or those brands of cigarette, and (b) the "tar" and nicotine content in milligrams of the lowest yield domestic cigarette: *Provided*, That a comparison to a class of cigarettes, or to many or most of the cigarettes of a class, shall not be deemed a comparison to another brand or brands of cigarette.

II

For the purposes of Paragraph I of this order:

1. The term "tar" shall mean the total particulate matter in the mainstream smoke of cigarettes as determined by the testing method employed by the Federal Trade Commission in its testing of the smoke of domestic cigarettes; and
2. The term "nicotine" shall mean total alkaloids as nicotine in the mainstream smoke of cigarettes as determined by the testing method employed by the Federal Trade Commission in its testing of the smoke of domestic cigarettes.

III

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

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 the order.

It is further ordered, That respondent 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 the order to cease and desist.

Complaint

79 F.T.C.

IN THE MATTER OF

SOL WIZAN TRADING AS UNITED FURNITURE CO.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS

Docket C-2016. Complaint, Aug. 20, 1971—Decision, Aug. 20, 1971

Consent order requiring a Los Angeles, Calif., individual trading as a firm selling and distributing furniture and other merchandise at retail to cease violating the Truth in Lending Act by failing to properly use on its installment contracts the terms "cash price," "unpaid balance of cash price," "amount financed," "deferred payment price," "total of payments," failing to disclose the "annual percentage rate," and all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the regulations promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Sol Wizan, individually, and trading as United Furniture Co., hereinafter referred to as respondent, has violated the provisions of said Acts, 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 Sol Wizan is an individual trading as United Furniture Co., at 4480 Whittier Boulevard, Los Angeles, California.

PAR. 2. Respondent is now and for many years has been engaged in the offering for sale, sale, and distribution of furniture and other merchandise to the public through retail stores.

PAR. 3. In the ordinary course and conduct of his business, respondent regularly extends, and for sometime has extended, consumer credit as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course and conduct of his business and in connection with his credit sales, as "credit sale" is defined in Regulation Z, has caused and is causing his customers to execute retail installment conditional sales contracts. Respondent has made no other written disclosures in order to comply with the Truth in Lending Act. By and through the use of these contracts, respondent: