

IN THE MATTER OF

BONNE BELL, INC.

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

Docket C-2019. Complaint, Aug. 25, 1971—Decision, Aug. 25, 1971

Consent order requiring a Lakewood, Ohio, manufacturer and distributor of cosmetic and toilet products to cease fixing the retail price of its products, soliciting the spying of one retailer on another, requiring resale of unsold merchandise to respondent, using marked packages to trace merchandise, terminating business with any dealer for failure to observe any prohibited practice, and to reinstate any former dealer which has failed to comply with the prohibited terms of this order.

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 (15 U.S.C. Sec. 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, Bonne Bell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its main office and principal place of business at 18515 Detroit Avenue, Lakewood, Ohio.

PAR. 2. Respondent has been and is now engaged in the manufacture,

sale and distribution of cosmetic and toilet products with net sales in 1967 in excess of \$9,500,000.

Respondent manufactures all of its products, with the exception of lipstick which it obtains from other manufacturers, in Lakewood, Ohio. It sells these products under the trade names of Bonne Bell and Ten-O-Six to approximately 8,000 franchised dealers located in various States of the United States and the District of Columbia.

The terms "Bonne Bell products" or "products" are hereinafter used to designate and mean the shampoos, moisture lotions, medicated makeups, creams and lotions, lipstick and eye makeups, and other cosmetic and toilet products sold and distributed by respondent.

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 its products to be shipped from its place of business in the State of Ohio to other states and the District of Columbia for resale through its franchised dealers.

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 competition with other corporations, individuals and partnerships engaged in the manufacture, sale and distribution of cosmetic and toilet products.

PAR. 5. In the course and conduct of its business, respondent has for many years pursued a policy, the purpose of which is and has been to establish, maintain, fix and control the retail prices at which Bonne Bell products are advertised, offered for sale or sold in the United States.

In furtherance of this policy, respondent has engaged and still engages in one or more of the following acts and practices, but not necessarily limited thereto, in one or more of the various States of the United States and the District of Columbia:

(a) Entering into written agreements with its dealers which require the dealers to adhere to resale prices established by respondent;

(b) Soliciting, inviting and obtaining from dealers in Bonne Bell products cooperation and assistance in ascertaining information pertaining to dealers or others who resell such products and fail to maintain resale prices established by respondent;

(c) Conducting special retail sales of Bonne Bell products through its dealers in which respondent fixes the time and duration of such sales and establishes the retail prices at which such products may be advertised and sold;

(d) Requiring its dealers to return all unsold sale merchandise at the end of each retail sale conducted by respondent;

(e) Entering into cooperative advertising agreements with its dealers in which respondent reserves the right to refuse payments for dealer newspaper advertisements of Bonne Bell products which contain retail prices not conforming with those established or suggested by respondent;

(f) Refusing earned cooperative advertisement payments to dealers who advertise Bonne Bell products at retail prices less than those established or suggested by respondent;

(g) Sending merchandise order sheets, invoices, brochures, sales bulletins, advertising or promotional aids and material to its dealers, in which established retail prices for Bonne Bell products are set forth;

(h) Prohibiting its dealers from reselling, bartering, transferring or transshipping Bonne Bell products to any other retailer, wholesaler, distributor or manufacturer;

(i) Attaching numbers to the packages or containers of Bonne Bell products sold to its dealers for the purpose of tracing sales or deliveries of such products to unauthorized retail outlets;

(j) Terminating business relationships with Bonne Bell dealers who fail to adhere to respondent's established or suggested resale prices or who divert Bonne Bell products to other retail outlets.

PAR. 6. The capacity, tendency and effect of respondent's use of the acts, practices, and courses of conduct hereinabove alleged has been and may be substantially to restrain, lessen, injure, and prevent competition, including price competition, in the marketing, sale, and distribution of Bonne Bell products by, and between and among respondent's dealers. Respondent's use of said acts, practices, and courses of conduct has been and is to the prejudice and injury of the public and constitutes unfair methods of competition in commerce and unfair 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 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, 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, Bonne Bell, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its main office and principal place of business at 18515 Detroit Avenue, Lakewood, Ohio.

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 Bonne Bell, Inc., a corporation, its officers, agents, representatives and employees, successors and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of any products including, but not limited to, cosmetic and toilet products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Engaging in any one or more of the following acts or practices:

1. Entering into, maintaining or enforcing any contract, agreement, understanding or arrangement with its dealers which has the purpose or effect of fixing, establishing or maintaining the prices at which its products are advertised or resold.

2. Fixing, establishing, controlling or maintaining the prices at which its dealers advertise, promote, offer for sale or sell its products.

3. Requiring prospective dealers to agree, through direct or indirect means, that they will adhere to established or suggested resale prices for respondent's products.

B. Requesting, soliciting or encouraging any dealer to supply information or to report to respondent regarding the failure of any other dealer to adhere to established or suggested resale prices for respondent's products.

C. Announcing dates other than suggested dates for the advertising, commencement or conclusion of any reduced resale price sale of respondent's products.

D. Requiring any dealer to resell to respondent any unsold stock of respondent's products.

E. Refusing earned cooperative advertising payments to dealers who advertise its products at prices other than established or suggested resale prices.

F. Including in its own advertising, or in any advertising or promotional aids or material supplied or sold to its dealers, any price or prices at which respondent's products may be resold by its dealers, or publishing, disseminating or circulating to any dealer any merchandise order sheet, invoice, or other material indicating any price or prices at which respondent's products may be resold by its dealers, unless it is clearly and conspicuously stated that such prices are "suggested prices only."

G. Preventing, restricting or hindering any of its dealers, by agreements or any other means, from reselling, transferring or transshipping respondent's products to any retailer, distributor, wholesaler or manufacturer.

H. Using numbers, letters or markings of any kind on or accompanying its products or on the containers, labelling or packaging of its products as a means of tracing sales of its products to particular dealers where the purpose or effect of such tracing is to implement any of the acts, practices, conditions, agreements or understandings prohibited in Paragraphs A and G above.

I. Discriminating or taking reprisals against or exerting pressure on any dealer to comply with any of the acts, practices, conditions, agreements or understandings prohibited in Paragraphs A and G above.

J. Terminating business relationships with any dealer because such dealer has failed to comply with any of the acts, practices, conditions, agreements or understandings prohibited in Paragraphs A and G above.

Nothing in this order shall be construed to prevent respondent from engaging in a legitimate fair trade program in those states having fair trade laws.

II. *It is further ordered*, That respondent shall reinstate any former dealer terminated since January 1, 1966, for failure to comply with one or more of the acts, practices, conditions, agreements or understandings prohibited in Paragraphs A and G of this order if such dealer desires reinstatement.

III. *It is further ordered*, That respondent shall within sixty (60) days after service upon it of this order, serve by mail a copy of this order on each of its dealers.

IV. *It is further ordered*, That respondent shall:

A. For a period of two years following the effective date of this order, serve a copy of this order upon each new dealer franchised by the respondent on the date the dealer becomes a franchisee of respondent.

B. Within thirty (30) days after service upon it of this order, serve a copy of this order by mail on each dealer terminated since January 1, 1966, together with a letter advising that such dealer, if eligible under the requirement set forth in Paragraph II above, may apply within thirty (30) days from receipt thereof for reinstatement as one of respondent's dealers.

C. Within ninety (90) days after service upon it of this order submit to the Commission (1) a list of all dealers terminated since January 1, 1966, (2) a list of all dealers who have been reinstated pursuant to Paragraph II above, and (3) a list of all dealers who have not been reinstated and the reason or reasons therefor.

V. *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 in which it has complied with this order.

VI. *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.

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Complaint

IN THE MATTER OF

MR. BEEF, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TRUTH IN LENDING ACTS*Docket C-2020. Complaint, Aug. 27, 1971—Decision, Aug. 27, 1971*

Consent order requiring a Toledo, Ohio, seller and distributor of meat and meat products to cease deceptively advertising and falsely guaranteeing its products, failing to disclose the weight loss of its untrimmed meat, discouraging the purchase of any of its advertised food, and failing to give notice to purchasers who sign promissory notes that such notes may be sold to third parties; the respondent is also required to cease violating the Truth in Lending Act by failing to use the terms cash price, downpayment, the number, amounts and due dates of the scheduled payments, the finance charge expressed as an annual percentage rate, and failing to make all other disclosures required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Truth in Lending Act and the regulations promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mr. Beef, Inc., a corporation, and Donald Bevelheimer individually and as an officer of said corporation hereinafter referred to as respondents, have violated the provisions of said Acts and regulations, 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:

COUNT I

PARAGRAPH 1. Respondent Mr. Beef, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 1928 Sylvania Avenue, Toledo, Ohio.

Respondent Donald Bevelheimer, is an officer of the corporate respondent. Said individual respondent formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is 31503 Plymouth Rd., Livonia, Michigan.

PAR. 2. Respondents, for some time last past, have been engaged in the advertising, offering for sale, sale and distribution of meat and meat products, to members of the purchasing public. Said meat and