

IN THE MATTER OF

REVERE CHEMICAL CORPORATION, ET AL.

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

Docket C-2138. Complaint, Jan. 24, 1972—Decision, Jan. 24, 1972

Consent order requiring a Cleveland, Ohio, marketer of snow and ice remover and its advertising agency located in Chicago, Ill., to cease misrepresenting their product as exclusive or unique, that it is more powerful or effective than sodium chloride, that it is least expensive for the removal of snow and ice, and that it can be used on concrete surfaces. The respondent advertising agency is also ordered to cease preparing "sweepstake" contests unless it discloses the total number, exact nature, and odds of winning each of the prizes, and failing to distribute all of the prizes announced.

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

Complaint

80 F.T.C.

Trade Commission, having reason to believe that Revere Chemical Corporation, a corporation, and Sidney G. Stromberg and Robert Ziska, individually and as officers of said corporation, and Stone & Adler, Inc., a corporation, 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. Revere Chemical Corporation 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 12407 Woodland Avenue in the city of Cleveland, State of Ohio.

Respondents Sidney G. Stromberg and Robert Ziska are individuals and are officers of Revere Chemical Corporation. They formulate, direct and control the acts and practices of Revere Chemical Corporation including the acts and practices hereinafter set forth. Their address is the same as that of Revere Chemical Corporation.

Respondent Stone & Adler, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 120 South Riverside Plaza, Chicago, Illinois.

PAR. 2. Respondents Revere Chemical Corporation, Sidney G. Stromberg, and Robert Ziska are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of Revere Ice Melter to distributors and jobbers and to the public.

Respondent Stone & Adler, Inc., is now and for some time last past has been, an advertising agency retained by Revere Chemical Corporation, and now and for some time last past has designed and prepared for publication advertising material including but not limited to the advertising material for "Revere's Winter Wonderland Sweepstakes" referred to herein and certain other advertising material referred to herein, for the purpose of promoting the sale of respondent Revere Chemical Corporation's Revere Ice Melter to distributors and jobbers and to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents Revere Chemical Corporation, Sidney G. Stromberg, and Robert Ziska now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia,

and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In the course and conduct of its aforesaid business respondent Stone & Adler, Inc., causes its respective services to be sold, placed and distributed throughout the United States and at all times mentioned herein has maintained a substantial course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product, the respondents have made, and are now making, numerous statements and representations in advertisements and promotional material distributed through the United States mails with respect to the effectiveness, safety, uniqueness, and inexpensiveness of the said product.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

(a) * * * there is nothing like instant acting Revere ICE MELTER anywhere—at any price.

(b) So please *do not* confuse Revere ICE MELTER with *any* other product you have ever used * * *

(c) Revere ICE MELTER works on an exclusive new melting principle—*Exothermic Action*.

(d) Revere ICE MELTER has 30 times greater melting power than rock salt.

(e) Revere ICE MELTER costs less per pound of ice removed than any other product or method.

(f) Won't harm grass, shrubs, pets, pavement or asphalt.

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

(a) Revere Ice Melter is a unique, new development that is the most effective product available for melting ice and snow.

(b) Revere Ice Melter has thirty times the melting power of rock salt at all temperatures and for all different times allowed for melting.

(c) Revere Ice Melter will have no damaging or harmful effects upon concrete surfaces.

(d) Revere Ice Melter is less expensive than any other product or method for melting ice.

PAR. 6. In truth and in fact:

(a) Revere Ice Melter is not a unique, new development, nor is it the most effective product available for melting ice and snow. Revere

Complaint

80 F.T.C.

Ice Melter is purified calcium chloride, a traditional product used for melting ice and snow.

(b) Revere Ice Melter does not have thirty times the melting power of rock salt at all temperatures and for all different times allowed for melting.

(c) Revere Ice Melter may damage or have harmful effects upon certain concrete surfaces.

(d) Revere Ice Melter is not less expensive than any other product or method for melting ice. Revere Ice Melter is more expensive than other brands of purified calcium chloride.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. Respondents Revere Chemical Corporation, Sidney G. Stromberg and Robert Ziska employed and authorized respondent Stone & Adler, Inc., to design the aforesaid sweepstakes promotion which resulted in the false, misleading and deceptive statements and representations referred to in Paragraph Nine below.

PAR. 8. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of the said product, respondent Stone & Adler, Inc., has participated in the design and preparation of advertisements and promotional material distributed through the United States mails which have made, and are now making, numerous statements and representations with respect to a "matching" or "preselected winners" promotional device utilized in connection with the offering for sale of said product.

Typical and illustrative of said statements and representations but not all inclusive thereof, are the following:

(a) You can't lose in Revere's \$50,000 Winter Wonderland Sweepstakes because we will send you 100 lbs. of Revere Ice Melter FREE in a trial shipment in addition to any of 1017 prizes you may already have won!

(b) One of these specially numbered coupons may have already won you \$5,000 ready and waiting for you to claim it! (1st Grand Prize); a new car, a sparkling new 1970 Ford Mustang—ready and waiting for the lucky winner to get in and drive it away! (2nd Grand Prize); Color TV Console by Philco Ford, two to be awarded! (3rd Grand Prize); Johnson "Wide Track" Family Snowmobile, three to be awarded! (4th Grand Prize); Compact Philco Color TV, Ten to be awarded! (5th Grand Prize); Push Button Blender by Hamilton Beach, 300 to be awarded! (6th Grand Prize); Colorpack II Camera by Polaroid, 700 to be awarded! (7th Grand Prize).

(c) In fact, you may have already won the \$5,000 or any of the 1,017 valuable prizes!

(d) Not one * * * not two * * * but *four* chances to win!

(e) What's more, because only Revere customers and a limited number of other selected businessmen are receiving this offer, your chances of winning are excellent.

PAR. 9. By and through the use of the above-quoted statements and representations, and others of similar import and meaning but not expressly set out herein respondent Stone & Adler has caused to be represented and is now causing to be represented, directly or by implication that:

(a) 1,017 prizes worth \$50,000 at retail, consisting of 1 cash award of \$5,000, 1 1970 Ford Mustang Automobile, 2 Philco-Ford Color Television Consoles, 3 Johnson Snowmobiles, 10 Philco Compact Television Sets, 300 Hamilton Beach Push-Button Blenders and 700 Polaroid Colorpack II cameras were to be awarded to individuals who held winning coupons in "Revere's \$50,000 Winter Wonderland Sweepstakes."

(b) Individuals participating in "Revere's \$50,000 Winter Wonderland Sweepstakes" were afforded a reasonable opportunity to win the represented prizes.

PAR. 10. In truth and in fact:

(a) 1,017 prizes worth \$50,000 were not awarded to individuals who participated in the "sweepstakes." Approximately 30 prizes consisting of 1 Philco Compact Television Set, 8 Hamilton Beach Push Button Blenders and 20 Polaroid Colorpack II Cameras were in fact awarded. The approximate retail value of prizes actually awarded was \$1,300.

(b) Individuals participating in "Revere's \$50,000 Winter Wonderland Sweepstakes" were not afforded a reasonable opportunity to win the represented prizes. Respondents distributed approximately 1,800,000 coupons to the public. Winning numbers were printed on 1,017 of the coupons. All other coupons contained a non-winning number. Of the 1,017 winning number coupons 1 was a first prize, 1 was a second prize, 2 were third prizes, 3 were fourth prizes, 10 were fifth prizes, 300 were sixth prizes, and 700 were seventh prizes. As a result of such distribution of winning coupons, participants in "Revere's \$50,000 Winter Wonderland Sweepstakes" had one chance in approximately 450,000 to win a first prize; one chance in approximately 450,000 to win a second prize; one chance in approximately 225,000 to win a third prize; one chance in approximately 150,000 to win a fourth prize; one chance in approximately 45,000 to win a fifth prize; one chance in approximately 1,500 to win a sixth prize; and one chance in approximately 625 to win a seventh prize.

Decision and Order

80 F.T.C.

Therefore, the statements and representations as set forth in Paragraphs Eight and Nine are false, misleading and deceptive.

PAR. 11. In the course and conduct of their aforesaid business, and at all times mentioned herein, respondents Revere Chemical Corporation, Sidney G. Stromberg, and Robert Ziska have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products for melting snow and ice of the same general kind and nature as that sold by respondents. In the course and conduct of its aforesaid business and at all times mentioned herein, respondent Stone & Adler, Inc., has been, and now is, in substantial competition, in commerce, with other advertising agencies.

PAR. 12. The use by respondents 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 respondents' product by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' 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 Bureau of Consumer Protection 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 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 they had reason to believe that the respondents have violated the said Act, and that complaint should issue stating their 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 their rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Revere Chemical Corporation, 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 12407 Woodland Avenue, in the city of Cleveland, in the State of Ohio.

Respondents Sidney G. Stromberg and Robert Ziska are individuals and are officers of the aforementioned corporate respondent. They formulate, direct and control the acts and practices of the aforementioned corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the aforementioned corporate respondent.

Respondent Stone & Adler, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 120 South Riverside Plaza, in the city of Chicago, in the State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, That respondents Revere Chemical Corporation, a corporation, and its officers, and Sidney G. Stromberg, and Robert Ziska, individually and as officers of said corporation, and Stone & Adler, Inc., a corporation, and its officers, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Revere Ice Melter or any other product for the removal of ice or snow, in commerce, as "commerce" is defined in the Federal Trade Commission Act, or in connection with the preparation, promotion, sale, distribution or use of any "sweepstakes," contest, game, or any other promotional device, in which the winners of prizes have been pre-selected, in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that such product is an exclusive, unique or novel method or development for the removal of ice or snow unless the chemical content of the product is disclosed and any such representation discloses in detail the specific manner in which and the degree to which it is so exclusive, unique or novel as compared to any product containing the same basic chemical content.

2. Representing, directly or by implication, that any such product is more powerful or more effective for melting ice or snow than sodium chloride unless the temperature at which such product is represented to be more powerful or effective is clearly and conspicuously disclosed.

3. Representing, directly or by implication, that any such product is the least expensive product available for the removal of ice and snow; *Provided, however*, That any such product may be accurately represented as less expensive than sodium chloride for removal of ice and snow at specified temperatures.

4. Representing in advertising, literature, directly or by implication, that any such product can be used upon any concrete surfaces unless it is clearly and conspicuously disclosed that the product is not recommended for use over uncured concrete or concrete in poor repair.

It is further ordered, That respondents Revere Chemical Corporation, Sidney G. Stromberg and Robert Ziska do forthwith cease and desist from authorizing or participating in the design, creation, distribution or use of any "sweepstakes" (or similar contest or game) in which the winners of prizes have been pre-selected.

II. *It is further ordered*, That respondent Stone & Adler, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the preparation, promotion, sale, distribution or use of any "sweepstakes," contest, game, or any other promotional device, in which the winners of prizes have been pre-selected, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or other promotional device unless the following are disclosed clearly and conspicuously in all advertising and promotional material concerning such devices:

85

Decision and Order

- (a) The total number of prizes to be awarded;
- (b) The exact nature of the prizes and the number of each;
- (c) The odds of winning each prize.

2. Failing to award and distribute all prizes of the value and type represented.

3. Failing to disclose, clearly and conspicuously, in all advertising and promotional material the exact number of prizes which will be available, the exact nature of the prizes, and the odds of winning each such prize.

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

It is further ordered, That respondents shall, within sixty (60) days after service of the order upon it, file with the Commission a report in writing setting forth in detail the manner and form of its compliance with the order to cease and desist.

IN THE MATTER OF

KUSTOM ENTERPRISES, INC., ET AL.