

BABY PRODUCTS, INCORPORATED, ET AL.

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

Docket C-2243. Complaint, July 11, 1972—Decision, July 11, 1972.

Consent order requiring an Arlington, Virginia, firm engaged in the sale, service,
and repair of baby furniture to cease, among other things, failing to notify
prospective customers, on the initial contact, that the purpose of the contact

is to sell merchandise or services; misrepresenting that respondents represent or perform services for any commercial firm if said representation is untrue; representing gifts as being given free by the manufacturer; representing that any contract, purchase agreement or order is cancellable or that purchase price will be refunded without disclosing the exact terms and conditions for the cancellation beforehand; representing merchandise as guaranteed unless full disclosure as to guarantor, nature and extent of guarantee is made; representing any article of merchandise as free when, in fact, the price of said article is included in the sales price.

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 Baby Products, Incorporated, a corporation, and Robert Amey, individually, and as an officer of said corporation, hereinafter referred to as respondents, have violated the provision 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 Baby Products, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 2731 Wilson Boulevard, in the county of Arlington, Commonwealth of Virginia.

Respondent Robert Amey is an individual, and an officer of said corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is 3905 Westgate Drive, Alexandria, Virginia.

PAR. 2. Respondents are now, and for some time last past have been engaged in the advertising, offering for sale, sale, distribution, and service and repair of baby furniture to the public. Sales are made by respondents' agents, representatives, or employees who contact prospective purchasers in their homes.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, said merchandise, when sold, to be shipped from their place of business in the Commonwealth of Virginia to purchasers thereof located in various 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 merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Complaint

81 F.T.C.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their merchandise, the respondents have made, and are now making, numerous statements and representations in materials disseminated through the mails, by telephone solicitation, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and by door-to-door solicitation. Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

Every week, throughout the United States, thousands of couples expecting their first baby are presented with FREE STORK-PAKS.

Hello, Mrs. _____, this is Stork-Pak International calling. Have you received our Stork-Pak postal card through the mail?

As you probably know from the postcard, the Stork-Pak is a gift that is given to couples expecting their first baby only and it contains some of America's finest baby products such as a gift from Beechnut, Chux Disposable Diapers, Diaper Nite Baby Powder, Curity Nursing Bottles, a gift from Kleenex, Ivory Soap, Waterproof Baby Pants. * * *

Now we have one more company with a peculiar problem. They would like to advertise their products, but they are too large to put a sample in the Stork-Pak. Nevertheless, they want you to become acquainted with the virtues of their products and the only way they could do this is by bringing you the film, and they hope that you will keep them in mind after the baby is born too. Okay?

We would like to show you a film on baby safety and baby care.

Fully cancellable with full refund and order cancellation in the event of miscarriage or stillbirth is company policy.

Your STROLL-O-CHAIR is guaranteed against structural defects due to the fault or act of the manufacturer for a period of one (1) year from the date of delivery provided that such defect is not the result of abuse, accident, neglect or rust due to exposure to the elements. Any such defective part of the STROLL-O-CHAIR will be repaired or replaced at no cost to the purchaser, except that the transportation charges are to be paid by the customer.

Our company is prepared to give you at no additional cost, your choice of any one of these lovely Bassett cribs.

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, respondents have represented, and are now representing, directly and by implication, that:

1. Respondents are contacting couples expecting their first baby solely to present them with free gifts.
2. Respondents are representing or are performing services for bona fide commercial organizations, such as "Stork-Pak International."
3. Free gifts are being given from the manufacturers of said gifts to couples expecting their first baby.
4. Respondents, doing business as "Stork-Pak International," act as the agents of a number of companies that manufacture and sell baby products, in order to acquaint couples expecting their first baby with

the products of those companies; and that a filmstrip, showing the product of one of those companies, is presented merely to acquaint said couples with this product; and, therefore, represent that respondents are not engaged in selling products or inducing the purchase of said products.

5. Respondents' sales representatives, in many instances, orally represent the aforesaid filmstrip to be solely on baby safety and baby care.

6. Respondents' baby carriages are guaranteed or warranted without condition or limitation; and that in the event of miscarriage or still-birth, cancellations of orders and refunds of purchase prices for such baby carriages are guaranteed or warranted without condition or limitation.

7. Upon immediate purchase of respondents' merchandise, customers will receive an additional item of baby furniture free.

PAR. 6. In truth and in fact:

1. Respondents do not contact couples expecting their first baby to solely present them with free gifts, but to sell them "Stroll-O-Chair," an item of baby furniture manufactured by the Rex Baby Carriage Manufacturing Co., Inc.

2. Respondents do not represent or perform services for bona fide commercial organizations, such as "Stork-Pak International."

3. Free gifts which are presented to couples expecting their first baby are not given by the manufacturers of the gifts.

4. Respondents and their representatives are not affiliated with "Stork-Pak International" and do not act as the agents of a number of companies in order to acquaint couples expecting their first child with the products of those companies; the filmstrip, which is an advertisement for the above-mentioned "Stroll-O-Chair," is not presented merely to acquaint said couples with this product, but is an aid used by respondents' sales representatives to induce said couples to purchase the "Stroll-O-Chair" at the time of the showing of the filmstrip, and therefore, respondents are engaged in selling products or inducing the purchase of said products.

5. The filmstrip shown by respondents' sales representatives is not solely on baby safety and baby care but is an advertisement for the "Stroll-O-Chair."

6. Respondents' guarantees or warranties of their baby carriages, and cancellation of orders and refund of purchase price upon still-birth or miscarriage, are subject to conditions and limitations which are not revealed in their advertised guarantees or warranties.

Complaint

81 F.T.C.

7. Customers of the respondents, upon immediately signing a sales agreement for the purchase of the proposed respondents' merchandise, do not receive an additional item of merchandise free. Instead, the cost of the so-called free additional merchandise is actually included in the purchase price of the merchandise offered for sale by the respondents.

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

PAR. 7. In the course and conduct of their business, respondents have failed to disclose certain material facts to purchasers, including, but not limited to, the fact that at respondents' option, conditional sales contracts, promissory notes, or other instruments of indebtedness executed by such purchasers in connection with their credit purchase agreements, may be discounted, negotiated, or assigned to a finance company or other third party to whom the purchaser is thereafter indebted and against whom defense may not be available.

Therefore, respondents' failure to disclose such material facts, both orally and in writing prior to the time of sale, was, and is, unfair, false, misleading and deceptive and constituted, and now constitutes, an unfair or deceptive act or practice.

PAR. 8. In the further course and conduct of their business, respondents and their salesmen or representatives, in a substantial number of instances, through the use of the false, misleading and deceptive statements, representations and practices set forth in Paragraphs Four and Five, above, have been able to induce customers into signing contracts upon initial contact without giving the customers sufficient time to carefully consider the purchase and consequences thereof.

Therefore, the act and practice as set forth above was, and is, unfair and false, misleading and deceptive.

PAR. 9. In the course and conduct of their aforesaid business and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms and individuals engaged in the same general kind and nature of business as that engaged in by the respondents.

PAR. 10. By and through the use of the aforesaid statements, representations and practices, the respondents place in the hands of distributors, solicitors and others the means and instrumentalities by and through which they may mislead and deceive the public in the manner and as to the things hereinbefore alleged.

PAR. 11. The use by respondents of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices,

74-173-12

Decision and Order

and their failure to disclose material facts, as aforesaid, 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' merchandise by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of the respondents as set forth above, 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 Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 considered the agreement and having provisionally 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 Baby Products, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 2731 Wilson Boulevard, in the county of Arlington, Commonwealth of Virginia.

Respondent Robert Amey is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said cor-

poration. His address is 3905 Westgate Drive, Alexandria, Virginia.

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 respondents Baby Products, Incorporated, a corporation, its successors and assigns and its officers, and Robert Amey, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or any other device, or through any agent, employee, representative, licensee or franchisee, in connection with the advertising, offering for sale, sale or distribution of baby furniture or other articles of merchandise in commerce, by door-to-door, mail, or telephone solicitation, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Failing to clearly and unqualifiedly reveal at the time of the initial contact seeking an appointment or commitment for a presentation in the home or such place other than respondents' place of business, and prior to seeking any commitment from the prospective buyer therefor and in all subsequent solicitations for such presentation whether directly or indirectly or by telephone, written or printed communication, or person-to-person, that the purpose of the contact is to offer products and/or services for sale; the identity of the corporate respondent; and the kind of products and/or services offered for sale.

2. Failing to clearly and unqualifiedly reveal the identity of the corporate respondent in direct mail promotional solicitation to prospective customers for the purchase of products and/or services sold by respondents in the home or such place other than respondents' place of business.

3. Misrepresenting, directly or indirectly, through oral or written statements, that respondents represent or perform services for any commercial organization or any individual or firm for whom they do not actually represent or perform services, or misrepresenting in any manner, the identity of the solicitors or of their firm and of the business it is engaged in.

4. Representing, directly or indirectly, through oral or written statements, that merchandise, purchased by the respondents and presented by them to prospective customers, are being presented free or as a gift from the manufacturers of said merchandise, *Provided, however,* That bona fide free gift or sample merchan-

dise, distributed by the manufacturer and intended for free distribution to the consumer, may be so represented to consumers by respondents.

5. Representing, directly or indirectly, through oral or written statements, that respondents are not engaged in selling products or inducing the purchase of said products; or, in any other manner, misrepresenting the purpose of the solicitation, activity, or business it is engaged in.

6. Representing, directly or indirectly, through oral or written statements, that the subject of a filmstrip which actually advertises respondents' products, is solely on baby safety and baby care.

7. Representing, directly or indirectly, through oral or written statements, that the contract, purchase agreement, or order is cancellable or that the purchase price will be refunded without disclosing in said contract, purchase agreement or order, prior to execution of said contract, all the requisite conditions which must be fulfilled before the respondents will so allow cancellation, and the exact terms and conditions of the cancellation.

8. Representing, directly or indirectly, through oral or written statements, that the respondents' merchandise is guaranteed, unless the nature and extent of the guarantee and the identity of the guarantor, who will perform thereunder, are clearly and conspicuously set forth in immediate connection therewith.

9. Representing, directly or indirectly, through oral or written statements, that any article of merchandise is being given free, 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 as, 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 respondents' business.

10. Failing to disclose to purchasers prior to execution of any installment sales contract, promissory note, or other instrument involving credit indebtedness, with such conspicuousness and clarity as is likely to be read and understood by the purchaser:

NOTICE

The instrument of indebtedness involving this purchase may be purchased from the seller by a bank, finance company or any other third party. If this is the case, your payments will be made to someone other than the seller. You should be aware that if this happens, under applicable laws you may have to pay the instrument of indebtedness in full to its new owner even if you have a claim against the seller.

Decision and Order

81 F.T.C.

It is further ordered, That respondents and respondents' agents, representatives, and employees, directly or through any corporate, subsidiary, division or other device, or through any agent, employee or representative, in connection with the advertising, offering for sale, sale or distribution of baby furniture or other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from furnishing, or otherwise placing in the hands of others, the means or instrumentalities which have the capacity to mislead customers or prospective customers as to any of the matters or things prohibited by this order.

It is further ordered:

(a) That respondents herein deliver, by registered mail, a copy of this order to each of their present and future dealers or franchisees, licensees, employees, salesmen, agents, solicitors, independent contractors or other representatives who sell, promote or distribute the products or services included in this order; provide each person so engaged with a returnable form clearly stating his intention to conform his business practices to the requirements of this order.

(b) That respondents institute a program of continuing surveillance in good faith designed to reveal whether the business operations of each of said persons so engaged conform to the requirements of this order; and

(c) That respondents discontinue dealing with all said persons so engaged who on their own continue the deceptive acts or practices prohibited by this order.

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

It is further ordered, That the respondents 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 the respondents herein shall within sixty (60) days after service upon them of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

RONZONI MACARONI CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
CLAYTON ACT, SECTION 2 (a)*Docket C-2244. Complaint, July 11, 1972—Decision, July 11, 1972.*

Consent order requiring a Long Island City, New York, manufacturer of macaroni, macaroni products, sauces and grated cheeses to cease discriminating in price between competing resellers or distributors of its products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Ronzoni Macaroni Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 50-02 Northern Boulevard, Long Island City, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of macaroni, macaroni products, sauces and grated cheeses. Respondent sells its said products to a large number of customers located in many parts of the United States purchasing such products for use, consumption or resale therein, including wholesalers, retailers and retail chain stores. Respondent's sales of its products are substantial, exceeding \$10,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to purchasers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of respondent's like products.