

Complaint

IN THE MATTER OF

CROMWELL OIL COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2321. Complaint, Nov. 20, 1972—Decision, Nov. 20, 1972*

Consent order requiring a Los Angeles, California, seller of distributorships and distributor of automotive oil additives and other merchandise, among other things to cease misrepresenting profits, services and conditions in recruiting distributors and illegally fixing the resale prices of its products.

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 Cromwell Oil Company, a corporation, and Bernard Plotkin and Harold Plotkin, individually and as officers of said 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:

COUNT I

PARAGRAPH 1. Respondent Cromwell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1737 Cordova Street, Los Angeles, California.

PAR. 2. Respondents Bernard Plotkin and Harold Plotkin are officers of said corporation. They formulate, direct and control the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused the dissemination of advertising material including but not limited to newspapers and magazines of interstate circulation and the use of the United States mail system in the solicitation of distributorships, and have caused their merchandise when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States and maintain and at all times mentioned herein have maintained, a substantial course of

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trade in said merchandise and distributorships in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents are now and for some time last past have been engaged in advertising, offering for sale and sale of distributorships, automotive oil additives and other merchandise to be sold by distributors to the public.

PAR. 5. For the purpose of inducing the purchase of distributorships, respondents have made and are now making numerous statements and representations in newspapers and promotional matter.

Among and typical, but not all inclusive of said statements and representations are the following:

(a) * * * offering immediate income * * * full training in the servicing of this exclusive territory. * * * many other company benefits including company paid advertising.

(b) * * * this lifetime business opportunity offers high profits * * * to service exclusive territory * * * Distributorship offers many other benefits * * *

(c) * * * total factory sponsored national, regional, and local advertising * * * there is never any cost to you for advertising * * * the factory absorbs the entire cost!

(d) Profit Potential Analysis * * *

Distributors' average profit per can	Estimated cans per day average	Number of retail accounts			
		60	100	200	250
30¢	(1)-----	\$6,480	\$10,800	\$21,600	\$27,000
	(2)-----	12,960	21,600	43,200	54,000
	(3)-----	19,440	32,400	64,800	81,000

PAR. 6. In the course and conduct of their business as aforesaid for the purposes of inducing the purchases of distributorships, respondents' representatives have made, and are now making, numerous oral statements and representations.

Among and typical, but not all inclusive of said statements and representations are the following:

(a) After these accounts are established for you by the company, we will come in with a local advertising campaign that will knock your hat off. We will literally bombard your entire area with a full saturation advertising program, mostly by radio.

(b) Full medical life insurance will be paid for you by Cromwell even though it does not appear in the fine print of the agreement.

(c) The average service station will on a national average sell sixty oil filters per month. This figures out to be \$600 a month. \$1800 a month can be earned on the sale of additives alone. Therefore, you can expect to make \$12,000 to \$14,000 a year on your investment.

(d) As a distributor, you will receive an immediate cash rebate of \$46.60 on each \$1000 worth of additives you sell.

(e) Your loss from consignments will be very minimal, less than 2 percent.

(f) As an incentive program for the service accounts a 25¢ tab will be redeemed by you from the service accounts on every can of a Cromwell X3 product. Cromwell will in turn redeem this tab from you.

PAR. 7. In truth and in fact:

(a) Respondents did not and do not establish retail service accounts for the distributor. The distributor has been and is presently required to aid in the establishment of these accounts.

(b) On many occasions the aforesaid retail service accounts have been and are presently in territories previously sold to prior Cromwell X3 distributors.

(c) Cromwell has not nor does it presently saturate the distributor's area with local, regional and national advertising. On the contrary, respondents' advertising campaign has consisted and does now consist of a few spots on non-prime time radio shows and ads in national automotive magazines.

(d) The respondents have never nor are they now paying for any type of medical life insurance in behalf of respondents' distributors.

(e) The assurance of an immediate profit was and is illusory and the respondents' profit analysis has proved to be a gross exaggeration.

(f) The \$46.60 rebate to the distributor for each \$1000 of additives sold was changed to require the distributors to only apply the aforesaid rebate to future orders from respondents.

(g) Losses by the distributor on consignment orders proved to be more than 2 percent and in many cases closer to 10 percent.

(h) The cash redemption of the 25¢ tabs was discontinued without prior notice to distributors and respondents presently permit distributors to apply tab redemptions only as credits on orders.

Therefore, the statements and representations in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

PAR. 8. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce with corporations, firms and individuals in the sale of distributorships, automotive oil additives and or other merchandise.

PAR. 9. The use by respondents of the aforesaid false and 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 respondents' exclusive distributorship and substantial quantities of

respondents' merchandise by reason of said erroneous and mistaken belief.

PAR. 10. 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.

COUNT II

PAR. 11. The allegations of Paragraphs One through Four and Paragraph Eight are incorporated herein by reference.

PAR. 12. Respondents in combination, agreement, understanding and conspiracy with its distributors and with the cooperation or acquiescence of its service accounts have for some time last past, and are now, engaged in a planned course of action to fix, establish and maintain certain specified uniform prices at which its products are resold. In furtherance of said planned course of action respondents have for some time last past, and are now, engaging in the following acts and practices among others:

(a) establishing agreements, understandings and arrangements with their distributors, some of whom are located in states which do not have fair trade laws, as a condition precedent to the granting of a distributorship that such distributors will maintain its resale prices;

(b) regularly furnishing their distributors with price lists and necessary supplements thereto containing the established resale price;

(c) informing their distributors by direct and indirect means that it expects and requires all of their distributors to maintain and enforce their resale price or such distributorship will be terminated.

PAR. 13. By means of the aforesaid acts and practices and more, respondents in combination, agreement, understanding and conspiracy with their distributors and with the acquiescence of their service accounts, have established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which respondents' merchandise will be sold.

PAR. 14. The acts and practices of respondents as herein above described have been and are now having the effect of hindering, lessening, restricting, restraining and eliminating competition in the resale and distribution of respondents' automotive oil additives and other merchandise and constitute unfair methods of competition in commerce all in derogation of the public interest 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 Los Angeles Regional 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 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 Cromwell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1737 Cordova Street, Los Angeles, California.

Respondents Bernard Plotkin and Harold Plotkin are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their principal office and place of business is located at the above stated address.

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

I

It is ordered, That respondents Cromwell Oil Company, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation,

subsidiary, division or other device, and Bernard Plotkin and Harold Plotkin, individually, and as officers of said corporation, in connection with the advertising, offering for sale and sale of distributorships, automotive oil additives or other merchandise, products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing, directly or by implication, orally or in writing that:

1. Respondents have established or will establish retail accounts, customer routes, or any other type account for the distributor, franchisee or other customer without said customer's assistance;

2. Said retail accounts, customer routes, or any other type account are located in exclusive territories;

3. Respondents will conduct a large scale program of local, regional, or national advertising in the distributor's, franchisee's or other customer's area; or misrepresenting, in any manner, the amount of advertising that will be provided by respondents to its distributors, franchisees or other customers;

4. Respondents will pay for medical, life or any other type of insurance on behalf of the distributors, franchisees or other customers;

5. Respondents' distributors, franchisees or other customers will earn an amount of money which is greater than the average earnings of all current distributors, franchisees, or other customers; or misrepresenting, in any manner, the amount of earnings, profits or compensation which will be earned by respondents' distributors, franchisees or other customers;

6. Respondents will pay distributors, franchisees or other customers a cash rebate on sales of additives or any other product;

7. Losses from consignment orders by prospective distributors, franchisees, or other customers of respondents' will be less than the average amount of losses of all current distributors, franchisees or other customers; or misrepresenting, in any manner, the amount of losses which will be sustained from consignment orders;

8. Respondents will redeem, in cash, tabs from products sold by respondents.

It is further ordered, That respondents maintain adequate records for a period of two (2) years, and permit the inspection and copying thereof by Commission representatives:

- a. which disclose the facts upon which any representations of the type described in Paragraph I of this order are based; and

b. from which the validity of any representations of the type described in Paragraph I of this order can be determined.

It is further ordered, That respondents:

a. inform orally all prospective customers and provide in writing, in all contracts, that the contract may be cancelled for any reason by notification to respondents, in writing, within three days from the date of execution, and

b. refund immediately all monies to customers who have requested contract cancellation in writing within three days from execution thereof.

II

It is further ordered, That respondents Cromwell Oil Company, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, and Bernard Plotkin and Harold Plotkin, individually and as officers of said corporation, in connection with the advertising, offering for sale and sale of distributorships, automotive oil additives or other merchandise, products or services in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Requiring distributors to agree that they will resell at prices specified by respondents or that they will not resell below or above specified prices;

2. Requiring distributors to agree through direct or indirect means, that they will maintain respondents' specified resale price as a condition of purchasing respondents' exclusive distributorships and as a condition of buying respondents' products;

3. Publishing, disseminating, or circulating to any dealer any price lists, price books, price tags or other documents indicating any resale or retail prices without stating on such lists, books, tags or other documents that the prices are suggested or approximate;

4. Utilizing any other means of accomplishing the maintenance of resale prices established by respondents; *Provided, however*, nothing hereinabove shall be construed to waive, limit or otherwise affect the right of respondents to enter into, establish, maintain and enforce, in any lawful manner, any price maintenance agreement excepted from the provisions of Section 5 of the Federal Trade Commission Act by virtue of the McGuire Act Amendments to said Act and any other applicable statutes, whether now in effect or hereinafter enacted.

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

and to all of its distributors and shall instruct each distributor and future distributors to read this order and to be familiar with its provisions. Additionally, respondents shall deliver a copy of this order to cease and desist to all present and future personnel of corporate respondents engaged in the offering for sale or sale of any product, or any aspect of preparation, creation or placing of advertising, and that respondents shall secure a signed statement acknowledging receipt of said order from each such person. The respondent corporation's obligation to distribute a copy of this order to future distributors shall terminate five years from the date this order becomes effective.

It is further ordered, That respondent Cromwell Oil Company notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries, or any other change in the corporation.

It is further ordered, That the respondents 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 the order.

IN THE MATTER OF

LANIER CARPETS, INC., ET AL.

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

Docket C-2322. Complaint, Nov. 22, 1972—Decision Nov. 22, 1972

Consent order requiring a Dalton, Georgia, manufacturer and retailer of carpets and rugs, among other things to cease manufacturing for sale, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lanier Carpets, Inc., a corporation, and