

Simeon L. Archer, individually and as an officer of the said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the rules and regulations promulgated under the Flammable Fabrics Act, as amended, 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 Lanier Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Respondent Simeon L. Archer is an officer of the said corporate respondent. He formulates, directs, and controls the acts, practices, and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with their principal place of business located at 705 Straight Street, Dalton, Georgia.

PAR. 2. Respondents are now and for some time last past have been engaged in the manufacturing for sale, sale and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act, as amended, which products, fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were carpets and rugs in style "Colony HDR," subject to Department of Commerce Standard For The Surface Flammability of Carpets and Rugs (DOC FF 1-70).

PAR. 3. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, and as such constituted, and now constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning 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 Division of Textiles and Furs 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 Flammable Fabrics Act, as amended; 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 Acts, 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 Lanier Carpets, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia.

Respondent Simeon L. Archer is an officer of the said corporation. He formulates, directs and controls the acts, practices and policies of the said corporation.

Respondents are engaged in the manufacture and sale of carpets and rugs, with the office and principal place of business of respondents located at 705 Straight Street, Dalton, Georgia.

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 respondent Lanier Carpets, Inc., a corporation, its successors and assigns, and its officers, and respondent Simeon L. Archer, individually and as an officer of said corporation and respondents' agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce or selling or delivering after sale or shipment in com-

merce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to "Colony HDR" Style carpets as designated in subparagraph one of Paragraph Two of the complaint giving rise to this order, and any other styles determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance, by the Commission of the final compliance report.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since March 8, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

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 the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

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 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.

IN THE MATTER OF

BEATRICE FOODS CO., ET AL.

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

Docket C-2323. Complaint, Nov. 28, 1972—Decision, Nov. 28, 1972

Consent order requiring a Chicago, Illinois, manufacturer, seller and distributor of confectioneries and its Chicago based advertising agency, among other things to cease representing that consumption of its products is essential to instill, improve, and maintain athletic ability and performance; and that any such product is endorsed for use by athletes and their organizations, because of its contributions to their ability and performance.

COMPLAINT

The Federal Trade Commission, having reason to believe that corporate respondents Beatrice Foods Co. and I/Mac, Inc., have violated the provisions of Section 5 and 12 of the Federal Trade Commission Act (15 U.S.C., Sections 45 and 52, respectively), and it appearing to the Commission that a proceeding by it in respect thereof would be

in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. Beatrice Foods Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 120 South LaSalle Street, Chicago, Illinois.

PAR. 2. I/Mac, 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 36 South Wabash Avenue, Chicago, Illinois.

PAR. 3. Beatrice Foods Co. is now and for several years has been engaged in the manufacture, sale and distribution of various confectioneries which come within the classification of a "food," as said term is defined in the Federal Trade Commission Act. Said confectioneries include but are not limited to "Holloway Milk Duds."

PAR. 4. I/Mac, Inc., was prior to February 29, 1972, the advertising agency for the Holloway division of Beatrice Foods Co., and for several years has been placing for publication and causing the dissemination of advertising material, including but not limited to the advertising referred to herein, to promote the sale of certain of Beatrice Foods Co.'s confectioneries, which come within the classification of "food," as said term is defined in the Federal Trade Commission Act.

PAR. 5. Beatrice Foods Co. is now and has been maintaining a course of trade in confectionery products in commerce, as "commerce" is defined by the Federal Trade Commission Act. The volume of business in such commerce is now and has been substantial.

PAR. 6. In the course and conduct of their said businesses, respondents are now and have been causing the dissemination of certain advertisements concerning Beatrice Food Co.'s confectioneries, including but not limited to "Holloway Milk Duds," by United States mail and by various other means and media in commerce, as "commerce" is defined in the Federal Trade Commission Act. Said advertisements are and have been disseminated for the purpose of inducing and are and were likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 7. Typical of the statements and representations disseminated in said advertisements by respondents, but not limited thereto, is the following televised endorsement of "Holloway Milk Duds" by Lou Brock of the St. Louis Cardinals professional baseball team.

Complaint

81 F.T.C.

VIDEO:

(Isolated camera shot of Lou Brock stealing second base, getting a base hit, and catching a fly ball on the run in the outfield.)

(Front view of Brock, standing next to first base and speaking to the camera; zoom to Brock's legs and base.)

(View of pitcher going into throwing motion; camera follows Brock running to and sliding into second base. Ball is overthrown and Brock picks himself up quickly and runs on to third base.)

(Close-up of Brock holding a box of Milk Duds. Takes some.)

(Close-up of Milk Duds box. Brock points to emblem and notation of MLBPA.)

(Replay of Brock stealing second base.)

AUDIO:

VO: Lou Brock, St. Louis Cardinals outfielder—hitter, with blazing speed on the bases.

What's your secret for stealing second, Lou?

BROCK: I study every pitcher in the League and his moves. I take about a 4 to 5 step lead off the bag, and stay real loose.

BROCK: When the pitcher goes into his throwing motion, I take off like a sprinter . . . I take off running like I'm going for the last box of Milk Duds in town.

VO: Milk Duds with energy for speed. Is that where you get your speed, Lou?

BROCK: Well, I sure do like Milk Duds.

VO: Milk Duds are little bites of energy. Rich, chocolate-coated caramel. Milk Duds with energy for speed on the bases. That's why Milk Duds are the "The Official Candy of the Major League Baseball Players Association." You'll see the official seal on every box. Enjoy them often.

PAR. 8. By means of the foregoing advertisement and others similar thereto not specifically set out herein, respondents are now and have been representing, directly and by implication that the consumption of confectioneries such as "Holloway Milk Duds" is linked to and necessary for the instilling, improving and maintaining of athletic ability and performance, and that such a product is endorsed for use by athletes and various organizations representing athletics, including but not limited to the Major League Baseball Players Association, because such a product is linked to or necessary for the instilling, improving and maintaining of athletic ability and performance.

PAR. 9. The foregoing statements and representations are and were false, misleading or deceptive, either in and of themselves, or by

omission. In truth and in fact, the consumption of confectioneries such as "Holloway Milk Duds" is not linked to or necessary for the instilling, improving or maintaining of athletic ability or performance. Instead, said endorsements are based upon a monetary relationship between Beatrice Foods Co. and said endorsers and not upon any nutritional superiority or attribute of said product.

Therefore, the advertisements referred to in Paragraph Seven and statements and representations set forth in Paragraphs Seven and Eight are and were misleading in material respects, constitute and constituted "false advertisements" as that term is defined in the Federal Trade Commission Act, and are and were false, misleading or deceptive.

PAR. 10. The dissemination by respondents of said "false advertisements" are and were all to the prejudice and injury of the public and of competitors of respondents and constitute, and constituted, unfair or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

PAR. 11. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent Beatrice Foods Co. has been, and now is in substantial competition, in commerce, with corporations, firms, and individuals in the sale of confectionery products of the same general kind and nature as that sold by respondent.

PAR. 12. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent I/Mac, Inc., has been, and now is, in substantial competition in commerce with other advertising agencies.

PAR. 13. The use by respondents of the aforesaid false, misleading or deceptive statements, representations or practices and the dissemination of the aforesaid "false advertisements" has had, and now has, the capacity and tendency to mislead members of the consuming 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 Beatrice Foods Co.'s confectioneries by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or practices of respondents including the dissemination of "false advertisements," 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 or deceptive acts or practices in commerce and unfair methods of competition in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of 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 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 agreement, placed such agreement on the public record for a period of thirty (30) days, and received and considered comments, 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 Beatrice Foods Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 120 LaSalle Street, Chicago, Illinois.

Respondent I/Mac, 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 36 South Wabash Avenue, Chicago, Illinois.

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 respondent Beatrice Foods Co., a corporation, respondent I/Mac, Inc., a corporation, and their officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or

distribution of any bakery or confectionery product cease and desist from:

1. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents directly or by implication that:

A. The consumption of any such product is essential or necessary for instilling, improving or maintaining athletic ability or performance or that any such product has been selected or designated by an individual athlete or organization representing athletes because the consumption of such product is essential or necessary for instilling, improving or maintaining athletic ability or performance.

B. Any such product has been chosen for use by an athletic association, league, or any other athletic organization, due to the contribution it makes to athletic performance or physical fitness, where said choice is based primarily on monetary consideration flowing to the athletic association, league, or any other athletic organization.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any such product in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in either part of Paragraph 1 hereof.

For the purposes of this order, a bakery product shall be defined as any product which is classified under "Bakery Products," Group No. 205, by the *Standard Industrial Classification Manual 1967*, prepared by the Bureau of the Budget, Executive Office of the President. A confectionery product shall be defined as any product which is classified under Group No. 207 by the aforesaid publication.

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of their appropriate operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations 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 them, file with the Commission a report in writing setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

SUNSHINE ART STUDIOS, INC., ET AL.*

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket No. 8825. Complaint, Dec. 8, 1970—Decision, Nov. 30, 1972*

Order requiring three Springfield, Massachusetts, sellers of greeting cards and an affiliated collection agency, among other things to cease shipping and seeking payment for unordered merchandise; making deceptive "free" offers; using misleading order forms; sending substitute shipments without offering refunds; and collecting delinquent accounts through subterfuge.

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 Sunshine Art Studios, Inc., Junior Sales Club of America, Inc., Sales Leadership Club, Inc., and Guardian Collection Agency, Inc., corporations, and Ryland E. Robbins, individually and as an officer of said corporations, 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. Respondents Sunshine Art Studios, Inc., Junior Sales Club of America, Inc., Sales Leadership Club, Inc., and Guardian Collection Agency, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with their principal office and place of business located at 45 Warwick Street, Springfield, Massachusetts.

Respondent Ryland E. Robbins is an individual and an officer of each of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondents.

Respondents cooperate and act together in carrying out respondents' business as hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of greeting cards to the public and to retailers for resale to the public

*The complaint is reported as amended by the hearing examiner's order of Feb. 12, 1971, reflecting the change of name of Trans-American Collection Agency, Inc. to Guardian Collection Agency, Inc.