

IN THE MATTER OF
THE SPERRY AND HUTCHINSON COMPANY
ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8671. Final Order, February 16, 1973.

Order reaffirming previous Commission order, 73 F.T.C. 1099, as to Counts I and II of the complaint and requiring respondent, among other things to cease setting a maximum number of stamps to be dispensed by its retail licensees in relation to the purchases by such retailers' customers and conspiring with others to enforce its policy of limitation.

FINAL ORDER

Whereas, The Commission issued its original order in this case on June 26, 1968, [73 F.T.C. 1099,1226] from which respondent appealed to the United States Court of Appeals for the Fifth Circuit, seeking review of the issues relating to Count III of the complaint herein, and

Whereas, The Fifth Circuit reviewed the issues relating to Count III of the complaint, respondent having abandoned any challenge to those portions of the order relating to Counts I and II of the complaint, and

Whereas, The Commission petitioned the Supreme Court of the United States for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit from its decision adverse to the Commission, and

Whereas, The Supreme Court granted said writ and, upon its review of the issues relating to Count III of the complaint,

ordered the case remanded to the Commission for such further proceedings as may be appropriate, [405 U.S. 233] and

Whereas, The case has been remanded to the Commission, and

Whereas, The Commission has decided to republish as final the following portions of its order, relating to Counts I and II of the complaint, which were neither challenged by respondent nor judicially reviewed by the Courts:

Now therefore, it is ordered, That respondent, The Sperry and Hutchinson Company, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the issuing, distribution, sale, or the redemption of trading stamps in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining, or enforcing any plan or policy under which contracts, agreements, or understandings are entered into with any retailer which have the purpose or effect of:

- (a) fixing or establishing the maximum number of trading stamps which may be dispensed by retailers to their customers in relation to such customers' purchases of goods or services; and

- (b) requiring, expressly or by implication, or suggesting to or inviting any retailer to dispense trading stamps on a basis not to exceed a specified number of trading stamps in relation to purchases by such retailer's customers of goods or services.

2. Securing adherence to a scheme or policy of foreclosing the dispensing of trading stamps at the retail level in excess of any specified ratio of stamps to goods or services sold, by terminating or threatening to terminate or cancel, or refusing to enter into contractual relationship with, or threatening to refuse to deal with, any retailer, or taking any other affirmative action which goes beyond the mere declination to deal with a customer who will not observe such policy.

3. Combining, conspiring, or otherwise knowingly acting in concert with any other person to cause any retailer to dispense trading stamps in any specified ratio of the number of stamps to goods or services sold.

4. Communicating in any way with any other trading

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stamp company, or acting in any way in response to any communication from any trading stamp company, with respect to the ratio of the number of trading stamps dispensed in relation to goods or services sold by the retailer.

It is further ordered, That the respondent, within sixty (60) days after the effective date of this order:

(a) notify in writing all of its sales employees, sales representatives, and licensees of the provisions of this cease and desist order; and

(b) reform all contracts with retailers or others who dispense S&H green stamps to the public to conform with the provisions of this cease and desist order.

It is further ordered, That respondent, the Sperry and Hutchinson Company, 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.