

IN THE MATTER OF
WESTERN STORECASTING, LIMITED, ET AL.

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

Docket C-2373. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring a Canadian corporation in Vancouver, British Columbia, operating in-store broadcasting promotional plans, among other things to cease knowingly inducing and receiving discriminatory promotional allowances from suppliers, and participating in advertising arrangements resulting in unlawful discrimination among American retailer.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. Section 45), by virtue of the authority vested in it by said Act, having reason to believe that the parties named in the caption hereof and hereinafter more particularly described and referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, as hereinafter more particularly described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Western Storecasting, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its principal office located at 515-850 West Hastings Street, Vancouver, British Columbia, Canada. Respondent Western Storecasting, Limited, is known as and referred to herein as "Western."

Respondent William R. Schieman is an individual and an officer of the 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 1371 West 71st, Vancouver, British Columbia, Canada, and he is a citizen of the United States of America.

PAR. 2. Respondents, in connection with their business, have solicited, entered into and executed contracts and agreements with suppliers, located in the United States of America, which provide for Western to supply the following services and facilities

in connection with the sale and offering for sale of participating suppliers' products in certain IGA retail grocery stores located in western Washington, United States of America:

1. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers.

2. Advertising suppliers' products in the order and merchandising book of the participating retail grocery stores.

Said contracts and agreements provide that participating suppliers pay Western for the aforementioned services and facilities furnished by Western, through Western and to the participating IGA retail grocery stores.

PAR. 3. In the course and conduct of its aforementioned business during 1970 and 1971, Western solicited, entered into, and executed an agreement with the American Wholesale Grocery Company, a division of the Utah Wholesale Grocery Company, a Utah corporation, hereinafter referred to as "American."

Said agreement required Western to provide the following services and facilities in the IGA retail grocery stores who purchased from American and participated in the Western program:

1. Installation of tape decks and prerecorded tapes.

2. Arranging and providing for in-store sound broadcasts by prerecorded tapes of background music interspersed with commercial messages featuring the products of participating suppliers who sell through American.

In connection with this agreement, American furnished personnel and facilities to respondents for soliciting suppliers to enter the Western program in connection with the sale and offering for sale of the suppliers' products in western Washington, United States of America.

PAR. 4. In the course and conduct of their business, respondents executed contracts with certain IGA retail grocery stores. These contracts provided, in part, for said stores to purchase and promote all products and services advertised by all the suppliers participating in the in-store broadcasts.

PAR. 5. In the course and conduct of their business, respondents have engaged and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents send or cause to be sent, equipment, advertising materials, payments, communications, contracts, invoices and other items to and from their home offices in the Province of British Columbia, Canada, to and from the State of Washington in which the participating retail grocery stores are located.

In addition, many of the products sold and promoted in the retail grocery stores participating in the program have been transported from many States of the United States, in which said products were manufactured, prepared, or warehoused, to the State of Washington where said participating retail grocery stores are located.

PAR. 6. In the course and conduct of its business in commerce, and within the United States of America during 1970 and 1971, respondent Western has been the principal instrumentality and factor in negotiating and executing promotional and advertising arrangements between participating suppliers, American, and the participating retail grocery stores, wherein:

a. Participating suppliers have paid or contracted for the payment of something of value to respondent Western for the benefit of customers of such participating suppliers as compensation or in consideration for services and facilities furnished by or through said customers in connection with the sale or offering for sale of such participating suppliers' products, and wherein

b. Participating suppliers have contracted to furnish, contributed to the furnishing, and have furnished, through respondent Western, services and facilities connected with the sale or offering for sale of such participating suppliers' products to some of their retail grocery customers when respondents knew or should have known that the said payments for, or the said furnishing of, services and facilities were discriminatory in that neither respondents nor the participating suppliers offered and otherwise made available or accorded such payments for, or the furnishing of, services and facilities to all of said participating suppliers' customers, including those who do not purchase directly, competing with those so favored.

PAR. 7. By conceiving, authorizing and initiating the contracts with the participating retail grocery stores and with the participating suppliers, with the cooperation and assistance of American, as aforesaid, respondents controlled and determined the terms, conditions, rates, amounts, times, territories, and promotional arrangements between participating suppliers and their participating retail grocery customers.

Respondents knew or should have known that many of the participating suppliers did not offer or otherwise make available on proportionally equal terms the benefits of the payments, services and facilities of the Western program to all of their other retail customers, including those who did not purchase directly, competing with the favored participating retail grocery customers in the sale and distribution of such suppliers' products.

Respondents also failed to offer and otherwise make available on proportionally equal terms the Western program to all of the participating suppliers' other retail customers, including those who do not purchase directly, who, in fact, compete with the favored retail grocery customers.

As a result, respondents knew or should have known that the benefits of the payments, services and facilities of the Western program were not offered, accorded and otherwise made available to all of said participating suppliers' retail customers, including those who do not purchase directly, competing in the distribution of said participating suppliers' products.

PAR. 8. The acts and practices of respondents, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning and 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 Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 5 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 Western Storecasting, Limited, is a corporation organized, existing and doing business under and by virtue of the laws of the Province of British Columbia, Canada, with its principal office located at 515-850 West Hastings Street, Vancouver, British Columbia, Canada.

Respondent William R. Schieman, is an individual and an officer of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation. His address is the same as that of corporate respondent. Respondent William R. Schieman is a citizen of the United States of America.

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

ORDER

It is ordered, That respondents Western Storecasting, Limited, a corporation, its successors and assigns, and its officers, and William R. Schieman, individually and as an officer, and respondents' agents, representatives and employees, in connection with their business in commerce, as "commerce" is defined in the Federal Trade Commission Act, when doing business within the United States of America, do forthwith cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier for the benefit of such supplier's customer, for the purpose of compensating said supplier's customer for display and promotional services or facilities furnished by or through said supplier's customers, or for the purpose of furnishing display or promotional services and facilities, including background music and promotional announcements to said supplier's customers, in connection with the processing, handling, sale or offering for sale of such supplier's products by such customer, when respondents know or should know that such compensation, consideration, services, or facilities are not affirmatively offered, accorded, and otherwise made available by such supplier or respondents on proportionally equal terms to all the supplier's retail customers, including those who do not purchase directly from such supplier and who compete with the favored retail customers in the sale and distribution of such supplier's products.

2. Paying or contracting for the payment of anything

of value to or for the benefit of any retail customer of a supplier, or arranging for a supplier to pay anything of value to its retail customers, as compensation or in consideration for any services or facilities furnished by or through such retail customer, or furnishing, contracting to furnish, or contributing to the furnishing of any service or facility, including background music and promotional announcements, to any retail customer of such supplier, in connection with the processing, handling, sale or offering for sale of any of such supplier's products, unless such payment, compensation, consideration, services or facilities are affirmatively offered, accorded, and otherwise made available to all of such supplier's retail customers, including those who do not purchase directly from such supplier and who compete with the favored retail customers in the sale and distribution of such supplier's products.

3. Acting as an intermediary in transactions between suppliers and their retail customers as described in the complaint unless respondents affirmatively inform all such suppliers of such supplier's primary responsibility for seeing that the allowances they grant, or the services or facilities they furnish directly or indirectly in connection with the promotion of their products, to or for the benefit of some of their customers, are made available to all other customers, including those buying indirectly, who compete with the favored retail customers.

4. Requiring that a retail customer purchase or promote products of other participating suppliers, or all of the products of any one participating supplier, or all the products of all participating suppliers as a precondition for the direct or indirect receipt of promotional allowances and services from any participating supplier.

It is further ordered, That respondents shall not organize, sponsor, or initiate any in-store promotional program in the United States of America except under the following terms and conditions:

1. A copy of this order shall be delivered to each supplier who is invited to participate or who initiates any in-store promotional program before any contract or agreement, whether written or oral, is entered into.

2. A copy of this order shall be delivered to any person or organization other than a supplier or retail store who participates in, organizes or sponsors the respondents' program.

3. Respondents will not perform the obligations required of any supplier as expressed in the "Guides for Advertising Allowances and Other Merchandising Payments and Services," promulgated by the Federal Trade Commission on May 29, 1969, or as subsequently amended or revised, unless the supplier is furnished with written procedures detailing respondents' duties and methods in assisting the supplier to comply with said guides, and respondents obtain a written receipt from the supplier acknowledging receipt of said procedures.

It is further ordered, That the respondents herein shall sixty (60) days before engaging in any promotional program within the United States file with the Commission a report in writing setting forth in detail the manner and form in which they will comply with this order.

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

It is further ordered, That 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 involves a corporation doing business in the United States of America, and 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.

IN THE MATTER OF
TAYLOR MOBILE HOMES, INC., ET AL.

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

Docket C-2374. Complaint, April 2, 1973—Decision, April 2, 1973.

Consent order requiring an Alcoa, Tenn., mobile home dealer to cease, among other things, misrepresenting selling prices, mark-ups, or wholesale costs; failing to disclose additional charges added to the advertised price; representing free service or products unless such are provided free of extra charges; and to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of credit, such information as required by Regulation Z of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Taylor Mobile Homes, Inc., Taylor Mobile Homes of Knoxville, Inc., Pioneer Mobile Homes, Inc., corporations, and Magic Castle Homes, Inc., a corporation doing business as Taylor Mobile Homes Jr. of Alcoa, Taylor Mobile Homes Jr. of Knoxville and Big Orange Trading Center, and L. Eugene Taylor and Larry J. Taylor, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of said Acts and implementing regulation, 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: