

Complaint

83 F.T.C.

IN THE MATTER OF
FOREMOST-McKESSON, INC.

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

Docket C-2427. Complaint, July 26, 1973—Decision, July 26, 1973.

Consent order requiring a San Francisco, California, wholesale distributor of druggists' sundries, among other things to cease inducing or receiving discriminating payments, and offering anticompetitive inducements.

Appearances

For the Commission: *R. J. Dolan, J. E. Passarelli.*

For the respondent: *Ian R. Gilbert*, Foremost-McKesson, Inc., San Francisco, California.

COMPLAINT

The Federal Trade Commission, pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, having reason to believe that Foremost-McKesson, Inc., a corporation, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), 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:

COUNT 1

Foremost-McKesson, Inc.

PARAGRAPH 1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

PAR. 2. Respondent is now, and has been for many years, engaged in the wholesale distribution of, among other products, druggists' sundries with total sales of such products of \$70 million for the fiscal year ended March 31, 1971.

Trade and Commerce

PAR. 3. Respondent, in the course and conduct of its business, has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases a great variety of products from a large number of suppliers located throughout the United States and causes such products to be transported from various States in the United States to the warehouses of its eighty-nine (89) sales divisions in other states for resale to retail drugstores located throughout the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent is now and has been in competition with other corporations, persons, firms and partnerships in the purchase, sale and distribution at wholesale of druggists' sundries.

Respondent's Trade Shows

PAR. 5. Respondent solicits suppliers of druggists' sundries to display their merchandise at respondent's trade shows which are held annually throughout the United States. Suppliers who wish to participate are required to rent booths from respondent for the purposes of displaying such merchandise. A substantial number of respondent's suppliers participate in one or more of these trade shows and many rent more than one booth at each show. In 1971, suppliers who participated in respondent's trade shows paid respondent in excess of \$400,000 to rent booths.

PAR. 6. During respondent's trade shows, agents, employees or representatives of the participating sundries suppliers also perform valuable services, specifically, staffing the booths rented by suppliers from respondent and demonstrating and promoting the suppliers' products. In addition, some suppliers give door prizes.

PAR. 7. Respondent's trade shows are attended by many of its retail drugstore customers who purchase the displayed merchandise from or through respondent.

Violation

PAR. 8. Some of respondent's suppliers who participated in respondent's trade shows in 1971 did not offer and otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products, payments, allowances, services, or other things of value, for advertising and

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promoting such products on proportionally equal terms to those granted respondent in connection with its trade shows.

PAR. 9. Therefore, respondent has induced and received or received from some of its suppliers, payments, as set forth in Paragraph 5 above, and services or facilities, as set forth in Paragraph 6 above, in connection with respondent's sale, or offering for sale, of products sold to respondent by such suppliers which respondent knew or should have known were not made available by such suppliers on proportionally equal terms to all other customers who do not purchase directly from such suppliers, in the sale and distribution of such products.

Such acts and practices constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45).

COUNT II

PAR. 10. The allegations of Paragraphs 1 through 7 are incorporated herein by reference.

Respondent's Inducements to Customers

PAR. 11. In connection with respondent's 1971 regional trade shows held in Acapulco, Las Vegas and Honolulu, by respectively, respondent's Northeast, South and North Pacific regions, respondent offered to pay, and paid for many of its customers, a portion of each customer's expenses for travel, accommodations and meals, the amount of such payments depending upon the customer's volume of purchases from respondent during the trade show.

PAR. 12. Respondent's offering to pay or paying the expenses of its customers as set forth in Paragraph 11 above may tend to foreclose respondent's competitors in the wholesale distribution of druggists' sundries from competing for the business of retail druggists who attend respondent's trade shows. Such acts and practices therefore constitute unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the cap-

tion hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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.

1. Respondent Foremost-McKesson, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office located at Crocker Plaza, One Post Street, San Francisco, California.

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, Foremost-McKesson, Inc., a corporation, and its officers, representatives, agents and employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale by the respondent, or in connection with any other transactions between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing and selling commodities and products in commerce, as "com-

merce" is defined in the Federal Trade Commission Act, shall cease and desist from:

1. Inducing and receiving, receiving or contracting for the receipt of anything of value from any supplier of druggists' sundries as compensation or in consideration for services and facilities furnished by or through respondent in connection with the processing, handling, sale or offering for sale of such supplier's products at respondent's trade shows, when respondent knows or has reason to know that such compensation is not affirmatively offered and otherwise made available by such supplier on proportionally equal terms to all of its other customers competing with respondent, including customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

2. Inducing and receiving, receiving or contracting for the receipt of, the furnishing of services or facilities, including but not limited to inducing prizes or gifts awarded to retail druggist customers attending respondent's trade shows, connected with respondent's offering for sale or sale of such products so purchased, when respondent knows or has reason to know that such services or facilities are not affirmatively offered or otherwise made available by such supplier on proportionally equal terms to all of its customers competing with the respondent, including customers who purchase from intermediaries and compete with respondent in the resale of such supplier's products.

It is further ordered, That respondent shall cease and desist from offering or providing to its customers, directly or indirectly, any material inducement, monetary or otherwise, to attend its trade shows whenever such customers' receipt of the inducement depends upon their purchases or volume of purchases of merchandise from respondent.

It is further ordered, That a copy of this order shall be delivered to each person or organization invited to participate in any trade show sponsored, organized or held by respondent, at the time such invitation is extended, for a period of five (5) years from the date of service of this order.

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

It is further ordered, That respondent shall, within sixty (60) days of service 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.

It is further ordered, That the effective date for compliance with this order shall commence September 1, 1973.

IN THE MATTER OF
EXXON CORPORATION, ET AL.