

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

Docket C-2453. Complaint, Sept. 12, 1973—Decision, Sept. 12, 1973.

Consent order requiring a Cincinnati, Ohio, operator of a chain of retail grocery stores selling a variety of food, grocery and nonedible household products, among other things to cease inducing or receiving promotional allowances. Respondent is further required to establish and maintain, for a period of five (5) years, a file containing each offered promotional allowance induced and received. Further, respondent must refund all payments solicited from suppliers for its 1968 Atlanta Division's Kroger Revolution Anniversary.

Appearances

For the Commission: *R. H. Cloe, Gordon Youngwood and R. W. Rosen.*

For the respondent: *Norman Diamond, of Arnold and Porter, Washington, D.C.*

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 the Kroger Co. ("Kroger"), a corporation, hereinafter sometimes referred to as respondent, has 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. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office located at 1014 Vine Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for many years past has been engaged in the operation of a chain of retail grocery stores, selling a great variety of food, grocery and nonedible household products. Additionally, Kroger operates a chain of retail drug stores, a trading stamp company and several food processing facilities. On January 1, 1972, Kroger had 1,431 retail grocery stores in twenty states. The stores are grouped by divisions according to their geographical location.

In the course of its grocery business, Kroger purchases many types of food, grocery and nonedible household products from a large number of manufacturers, suppliers and handlers of such products. Kroger's sales of its products are substantial, exceeding \$3,707,918,000 in 1971, making it the third largest grocery chain in the United States.

PAR. 3. In the course and conduct of its business, Kroger has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Kroger's purchases in commerce for resale are substantial and include a great variety of products from a large number of suppliers located throughout the United States. Kroger causes these products, when purchased by it, to be transported from the places of manufacture or purchase to warehouses or stores located in many states. In many instances, a division warehouse services stores located in several states. In such divisions, Kroger often causes goods delivered to its warehouses to be transported to its stores located in other states. In addition, Kroger disseminates advertising in commerce and receives allowances and payments in commerce from suppliers for advertising and promotional services and facilities.

PAR. 4. In the course and conduct of its business in commerce, Kroger is now and has been in competition with other corporations, persons,

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firms and partnerships in the purchase, sale and distribution of food, grocery and nonedible household products.

PAR. 5. In the course and conduct of its business, Kroger has for several years knowingly induced and received from some of its suppliers special allowances and payments and other things of value to or for Kroger's benefit as compensation or in consideration for services or facilities furnished by or through Kroger in connection with the processing, handling, sale or offering for sale of products sold to Kroger by such suppliers, when Kroger knew or should have known that such special allowances and payments and other things of value were not made available on proportionally equal terms to all other customers of such suppliers competing with Kroger in the sale and/or distribution of such suppliers' products.

For example, during early 1968, Kroger's Atlanta Division solicited the participation of its suppliers in a Kroger Revolution Anniversary promotion to be held in May and June 1968. The terms and conditions for participation therein were set forth in a form distributed by Kroger to its suppliers and their brokers. As a result of the solicitation, about 37 suppliers paid Kroger's Atlanta Division approximately \$22,000 in financial payments, allowances and other thing of value in return for the promotion of their products in the manner indicated in the Kroger solicitation.

Many of the 37 suppliers did not offer or otherwise make available to all of their customers competing with stores of Kroger's Atlanta Division payments, allowances or other things of value for advertising, display or other promotional services or facilities on terms proportionally equal to those granted Kroger. When respondent induced and received the payments, allowances and other things of value from its suppliers, Kroger knew or should have known that it was inducing and receiving payments, allowances and other things of value from its suppliers that the suppliers were not offering or otherwise making available on proportionally equal terms to all other customers competing with respondent in the sale and/or distribution of such suppliers' products.

PAR. 6. The methods, acts and practices of Kroger, as herein alleged, 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 (15 U.S.C. 45).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau 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, and enters the following order:

1. Respondent the Kroger Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1014 Vine Street, Cincinnati, Ohio.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent Kroger, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchase in commerce, or receipt of consigned merchandise in commerce, as "commerce" is defined in the

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Federal Trade Commission Act, of products for resale by Kroger in its retail grocery stores, do forthwith cease and desist, for a period of five years from the effective date of this order, from:

Inducing and receiving promotional allowances, payments or other things of value, solicited by respondent, from any supplier, including consignors as well as vendors, as compensation for or in consideration of advertising and promotional services furnished by or through respondent in connection with special promotions originating with or sponsored by respondent, and involving the sale or offering for sale of such supplier's products, including consigned products, except to the extent that such promotional allowances, payments or other things of value do not exceed the amount made available to respondent as cooperative advertising or promotional allowances pursuant to the cooperative advertising and promotional plans of such supplier offered in the regular course of such supplier's business.

II

It is further ordered, That, for a period of five years from the effective date of this order, respondent Kroger shall establish and maintain at its general office in Cincinnati, Ohio a separate file containing each offered promotional allowance, payment or other thing of value, induced and received, within the meaning of Paragraph I of this order. The file shall be maintained alphabetically, according to suppliers, with all offers and related materials pertaining to each supplier filed chronologically, within that supplier's portion of the file. The information shall be maintained for the effective period of this order. The file shall be made available to employees of the Federal Trade Commission, for inspection and copying, upon written notice of 10 calendar days.

III

It is further ordered, That, within 60 days of the effective date of this order, respondent Kroger shall refund to each supplier granting it an allowance, payment or other thing of value for its 1968 Atlanta Division's Kroger Revolution Anniversary the amount of such allowance, payment or other thing of value.

IV

It is further ordered, That respondent Kroger shall forthwith distribute a copy of this order to the vice president in charge of each of its retail grocery divisions.

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It is further ordered, That respondent Kroger 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 that may affect compliance obligations arising out of the order.

VI

It is further ordered, That, within 60 days after service upon it of this order, respondent Kroger shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order and such other reports as may, from time to time, be required.

IN THE MATTER OF

CONSOLIDATED FOODS CORPORATION

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 2 (a)
OF THE CLAYTON ACT