

Complaint

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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

STANDARD OIL COMPANY OF CALIFORNIA

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

Docket C-2470. Complaint, Oct. 17, 1973—Decision, Oct. 17, 1973.

Consent order requiring a San Francisco, Calif., manufacturer of refined petroleum products, among other things to cease entering into or enforcing agreements which induce or compel new car dealers to purchase all or substantially all of their petroleum products from respondent or prevents dealers from purchasing, handling, or selling petroleum products distributed by sources other than respondent. Further, respondent must renegotiate and amend all contracts between itself and its dealers so as to conform with the order within ninety (90) days from the effective date of the order.

Appearances

For the Commission: *Ronald Dolan.*

For the respondent: *David McKean, Whitehead & Wilson, Wash., D.C., and Wallace L. Kaapcke, James O'M. Tingle, John E. Hartman of Pillsbury, Madison & Sutro, San Francisco, Cal.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Standard Oil Company of California, hereinafter referred to as "Standard," has violated the provisions of Section 5 of the Federal Trade Commission Act, (15 U.S.C. § 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, and states its charges as follows:

PARAGRAPH 1. Standard Oil Company of California is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business at 225 Bush Street, San Francisco, Cal.

PAR. 2. During 1970, Standard had net sales of approximately \$4.2 billion, ranking as the fifth largest petroleum company in the United States. Standard's net income for 1970 totaled approximately \$455 million.

PAR. 3. Standard manufactures a variety of refined petroleum

products and markets them in the United States to over 2,400 franchised new car dealers (hereinafter referred to as "dealers") under the trade names "Standard," "Chevron," "RPM," "Zero-lene," "Dextron," and "Parapet." These dealers sell such petroleum products to the general public as part of new car preparation and warranty work, and in the course of general automotive service and maintenance.

PAR. 4. Standard is engaged in "commerce" within the meaning of the Federal Trade Commission Act (15 U.S.C. § 44) in that it manufactures, distributes and sells petroleum products and other merchandise through service stations, franchised new car dealerships, and other retail outlets located in various States of the United States.

PAR. 5. In the course and conduct of its business, Standard, except to the extent limited by the acts, practices and methods of competition hereinafter alleged, has been and is now in competition with other corporations, firms, partnerships and persons engaged in the manufacture, processing, distribution, and sale of lubricants and other refined petroleum products in commerce.

PAR. 6. Standard uses, and has used for some time, a credit card system whereby a customer holding a credit card issued or accepted by Standard can use the card to charge the purchase price of refined petroleum products, other merchandise and services from dealers from whom Standard has agreed to accept such charges. Periodically, the invoices evidencing these credit card transactions are remitted to Standard by participating dealers, and Standard pays the full face value of the invoices to the dealer. Standard assumes the responsibility and risk of collecting all such charges from the cardholders. As of December 31, 1970, Standard had 5,142,000 credit card accounts. During 1970, \$975 million was charged on Standard's credit card.

PAR. 7. During 1968, Standard expanded its credit card program whereby it authorized dealers to accept, in addition to Standard's own credit card, BankAmericard, Master Charge, and American Express credit cards (hereinafter referred to as "Bank/Travel cards") for credit purchases of merchandise and services. Under this expanded program, the dealers periodically remit to Standard all invoices representing credit card transactions on the Bank/Travel cards and Standard pays the dealer the full amount of the face value of the Bank/Travel card invoices, thereby absorbing the discount charged pursuant to the Bank/Travel card programs. The discounts charged by the issuers of

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the Bank/Travel cards range from 2½ percent to 5 percent of the face value of the invoices.

PAR. 8. Beginning on or about July 1, 1971, Standard modified the terms of its credit card program. It now imposes no service charge as long as the dealer's average monthly dollar volume of purchases of Standard products over the preceding three months equals or exceeds one-third of the dollar value of the credit charges on the Bank/Travel cards, cards of other oil companies, and Standard's card for which the dealer seeks reimbursement in any given month. To the extent that the monthly amount of credit charges exceeds three times the aforesaid average monthly amount of purchases from Standard, Standard imposes a service charge of 3 percent of the face value of the invoices representing such credit charges.

PAR. 9. The aforesaid acts, practices and methods of Standard have induced, and do now induce, a substantial number of dealers who were or could be customers of those of Standard's competitors who do not have a credit card program of their own, or cannot economically initiate such a program, or both, to discontinue or to refrain from purchasing said competitors' petroleum products, and to handle, stock and dispense Standard's petroleum products exclusively or preferentially. The tendency and effect of said acts, practices and methods, are, and have been to hinder, hamper and restrain competing manufacturers in disposing of their petroleum products to dealers, and to lessen, eliminate, restrain, hamper and suppress competition in the sale of petroleum products for motor vehicles in California, Washington, Oregon, and other Western States.

PAR. 10. The aforesaid acts and practices of Standard, as herein alleged, constitute unfair methods of competition and unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an ad-

mission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed 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 in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Standard Oil Company of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 225 Bush Street, city of San Francisco, State of California.

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.

For purposes of this order, the following definitions shall apply:

"Petroleum products" shall mean motor oils, greases and automatic transmission fluid.

"Dealer" shall mean a new passenger automobile dealer dealing in the sale and in the service, repair or maintenance of new passenger automobiles other than through a branded service station or other outlet primarily engaged in selling gasoline at retail to the general motoring public under one of respondent's trademarks. For purposes of subparagraphs (b) and (c) of Paragraph II and Paragraphs III and IV of this order "dealer" shall be limited to such dealers located in Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and in any of the following counties of Idaho, *i.e.*, Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah,

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Clearwater, Nez Perce, Lewis, Idaho, Adams, Washington, Payette, Gem, Canyon, Valley, Ada and Boise.

"Agreement" shall mean agreement, contract or understanding, written or oral, express or implied, formal or informal.

II.

It is ordered, That respondent, Standard Oil Company of California, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in or in connection with the merchandising, offering for sale and sale or distribution of petroleum products in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall not:

(a) Enter into or enforce any agreement with any dealer or induce or compel or attempt to induce or compel, by any means whatever, any dealer to enter into any agreement which requires such dealer to purchase all or substantially all of its requirements of petroleum products from respondent, or which prevents such dealer from purchasing, handling or selling petroleum products distributed by sources other than respondent.

(b) Enter into, renew or initiate an offer to enter into or renew any agreement with a dealer to accept credit charges on credit cards issued by respondent or any other company for a term of less than one (1) year; *Provided, however,* Such agreement may provide for termination by respondent prior to the expiration of such term upon written notice but only for good cause and shall provide for termination by a dealer prior to the expiration of such term for any reason upon written notice. Good cause shall mean a material breach of any of the provisions of such agreement or of any instructions or regulations periodically published in connection therewith: *Provided,* That good cause shall not include any failure by dealer to purchase, stock or sell respondent's petroleum products and shall not include dealer's purchase, handling or sale of petroleum products distributed by sources other than respondent.

(c) During the term of any agreement referred to in subparagraph (b) hereof, threaten to terminate or to not renew any such agreement except for good cause as defined in subparagraph (b) hereof; *Provided,* That in the absence of

such threats nothing herein shall prevent respondent from declining to renew such agreement for any reason.

III.

It is further ordered, That within ninety (90) days from the effective date of this order, respondent shall renegotiate and amend all agreements between respondent and its dealers so as to conform to the provisions of this order; *Provided,* That if any dealer shall refuse to enter into an amended agreement required by this order, any existing agreement may continue in effect for the remainder of its term except that respondent may not terminate such agreement during its term except for good cause as defined in Paragraph II(b) herein.

IV.

It is further ordered, That within thirty (30) days of the date of service of this order, there shall be delivered to each dealer purchasing petroleum products from respondent a letter on the stationery of respondent, signed by a duly authorized officer thereof and in the form and language of Exhibit A attached hereto. Respondent shall supply a copy of such letter to its salesmen engaged in selling petroleum products to any such dealer.

V.

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

VI.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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.

VII.

It is further ordered, That respondent shall, within ninety (90) 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. This order shall remain in effect for ten (10) years from its effective date.

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EXHIBIT A

NOTICE TO DEALERS

(On letterhead of Standard Oil Company of California)

Dear Customers:

The Federal Trade Commission has recently entered a consent order against Standard Oil Company of California relating to Standard's acceptance of credit card delivery tickets. The Order does not, however, constitute an admission by the company that the matters questioned by the Commission were unlawful.

The Order requires Standard to notify you that if you participate, either now or in the future, in Standard's credit card arrangements, whereby you accept designated credit cards for credit purchases of various products and services, you may not be required by Standard to purchase all or substantially all of your requirements of motor oils, greases and automatic transmission fluid (herein referred to as "petroleum products") from Standard nor may you be prevented from handling or purchasing petroleum products from other companies. In so notifying you, Standard reaffirms its longstanding policy that its customers are not required to handle our products exclusively and are free to handle the products of other suppliers.

In addition, this order requires Standard to change its credit card plans and agreements so that they will have terms of not less than one (1) year and cannot be terminated by Standard during the year because of a failure by you to purchase petroleum products from Standard or because you may purchase petroleum products from other companies. Such plans or agreements may, however, be terminated during the year by Standard for other good reasons and may be terminated by you at any time upon written notice.

Sincerely,

IN THE MATTER OF

UNION OIL COMPANY OF CALIFORNIA

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2471. Complaint, Oct. 17, 1973—Decision, Oct. 17, 1973.*

Consent order requiring a Los Angeles, Calif., manufacturer of refined petroleum products, among other things to cease entering into or en-