

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 enforcing agreements which induce or compel new car dealers to purchase all or substantially all of their petroleum products from respondent or prevents said dealers from purchasing, handling, or selling petroleum products distributed by sources other than respondent. Further, respondent must renegotiate and amend all contracts with 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: *Douglas C. Cregg, General Counsel*, Los Angeles, Calif.

COMPLAINT

The Federal Trade Commission, having reason to believe that Union Oil Company of California 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. Respondent Union Oil Company of California, hereinafter referred to as "Union," is a corporation organized and existing under the laws of the State of California, with its principal office and place of business at 461 South Boylston Street, Los Angeles, Cal.

PAR. 2. Union's net sales during 1970 totaled about \$1.8 billion, its net income totaled about \$114 million, and it ranked as the fifteenth largest oil company in the United States.

PAR. 3. Union manufactures a variety of refined petroleum products and markets them in the United States to over 3,000 franchised new car dealers (hereinafter referred to as "dealers") under the trade name "Union," "Triton," and "Royal." 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. Union 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, Union, 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. Union uses, and has used for some time, a credit card system whereby a customer holding a credit card issued by Union can use the card to charge the purchase price of refined petroleum products, other merchandise and services from dealers from whom Union has agreed to accept such charges. Periodically, the

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delivery tickets evidencing these credit card transactions are remitted to Union by participating dealers, and Union pays the full face value of the delivery tickets to the dealer. Union assumes the responsibility and risk of collecting all such charges from its cardholders. As of December 31, 1970, Union had over 4,884,000 cardholders. During 1970, approximately \$552.6 million was charged on Union's credit card.

PAR. 7. In connection with this credit card program, for a period of time ending approximately September 1969, Union used a form of agreement with its dealers in which it agreed to purchase from the dealer all valid delivery tickets for merchandise and services covering credit sales to holders of Union credit cards and other credit cards accepted by Union subject to the terms and provisions of the applicable New Car Dealer Credit Card Instructions. The dealer agreed to purchase and receive from Union, advertise for sale and sell, not less than sixty percent (60%) of all motor oils and greases required by the dealer for sale to his customers whose passenger vehicles were serviced or repaired in the dealer's garage or automotive service or repair department.

PAR. 8. During or after September 1969, Union discontinued the use of the aforesaid form of agreement, and began to use and continues to use a New Car Dealer Credit Card Agreement which requires the dealer to follow the instructions and policies set forth in the credit card guide prepared for dealers. These instructions provide that only authorized petroleum products marketed by Union can be sold on Union's credit card or other accepted credit cards.

PAR. 9. During 1969, Union expanded the credit card program in its western region whereby it authorized dealers to accept, in addition to Union's own credit card, BankAmericard and Master Charge credit cards (hereinafter referred to as "Bank cards") for credit purchases of merchandise and services. Under this expanded program, the dealers periodically remit to Union all delivery tickets representing credit card transactions on the Bank cards and Union pays the dealer the full amount of the face value of the Bank card delivery tickets, thereby absorbing the discount charged pursuant to the Bank card programs. The discounts charged by the issuers of the Bank cards range from 2½ percent to 3 percent of the face value of the delivery tickets.

PAR. 10. The aforesaid acts, practices and methods of Union have induced, and do now induce, a substantial number of dealers who were or could be customers of those of Union's competitors

who do not have a credit card program, 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 Union'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 said competing manufacturers in selling 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. 11. The aforesaid acts and practices of Union, 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 admission 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 Union Oil Company of California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal

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place of business located at 461 South Boylston Street, city of Los Angeles, 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 an 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.

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

II.

It is ordered, That respondent, Union 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) In the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington and Idaho, 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 be a material breach of any of the provisions of such agreement or instructions or regulations periodically published in connection therewith; *Provided*, That it 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, all agreements between respondent and dealers shall be renegotiated and amended so as to conform with the provisions of this order.

IV.

It is further ordered, That within thirty (30) days of the date of service of this order, respondent shall deliver a letter on respondent's stationery, signed by a duly authorized officer of respondent and in the form and language of Exhibit A attached hereto, to each dealer purchasing petroleum products from respondent which is located in the states designated in Paragraph II(b) hereof. Respondent shall supply a copy of such letters 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.

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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.

EXHIBIT A

NOTICE TO DEALERS AFFECTED BY ORDER

(On letterhead of Union Oil Company of California):

Dear Customers:

The Federal Trade Commission has recently entered a consent order against Union Oil Company of California relating to Union's New Car Dealer Credit Card Agreements. The Order does not, however, constitute an admission by the company that the matters questioned by the Commission were unlawful.

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

In addition, the Order requires Union to change its New Car Dealer Credit Card Agreements so that they will have terms of one (1) year and cannot be cancelled by Union during the year because of a failure by you to purchase petroleum products from Union or because you may purchase petroleum products from other companies. Such Agreements may, however, be cancelled during the year by Union for other good reasons and may be cancelled by you at any time upon written notice.

Sincerely,

Complaint

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC., ET AL.

ORDER, OPIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Dockets 8860. Complaint, August 24, 1971—Order & Opinion, Oct. 19, 1973.

Order requiring a Rye, New York, manufacturer, seller, and distributor of bakery products, "Wonder Bread" and "Hostess" snack cakes, and its advertising agency, among other things to cease misrepresenting the nutritional content, efficacy or functional value of its products.

Appearances

For the Commission: *Thomas J. Donegan, Lynne C. McCoy, William S. Busker and David O. Bickart.*

For the respondents: *Gordon A. Thomas and Alan C. Davis, Rye, N.Y. and Covington & Burling, Wash., D.C. for ITT Continental Baking Company, Inc.; Cahill, Gordon, Sonnett, Reindel & Ohl, Wash., D.C. and Elhanan C. Stone, New York, N.Y. for Ted Bates & Company, Inc.*

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 ITT Continental Baking Company, Inc., a corporation, and Ted Bates & Company, Inc., a corporation, hereinafter referred to as respondents, have 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 ITT Continental Baking Company, Inc., 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 Halstead Avenue, Rye, N.Y.

PAR. 2. Respondent Ted Bates & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 666 Fifth Avenue, New York, N.Y.

PAR. 3. Respondent ITT Continental Baking Company, Inc., is now, and for some time last past has been, engaged in the manu-