

Complaint

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IN THE MATTER OF

K MART ENTERPRISES, INCORPORATED

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2553. Complaint, Oct. 1, 1974—Decision, Oct. 1, 1974*

Consent order requiring a Royal Oak, Mich., seller and distributor of automobile tires, among other things to cease misrepresenting the performance characteristics, construction, and structure of its tires. Further, respondent is required to maintain accurate records for Commission inspection.

Appearances

For the Commission: *D. McCarthy Thornton.*

For the respondent: *James C. Tuttle, Troy, Mich.*

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 K mart Enterprises Incorporated, a corporation, hereinafter 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. K mart Enterprises Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 3000 West Fourteen Mile Road, Royal Oak, Mich.

PAR. 2. Respondent is now, and for some time past has been, engaged in the business of advertising for sale, sale and distribution of automobile tires.

PAR. 3. In the course and conduct of its business, respondent advertises extensively in media of interstate circulation and broadcast. Respondent has maintained, and now maintains, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of automobile tires, respondent has made certain statements and representations concerning tires in media of interstate circulation. Said statements include the following:

KM 100 * * * Polyester construction for added strength.

PAR. 5. Through the use of said statements, disseminated as aforesaid, respondent has represented, directly and by implication, that at the time that respondent made the statements set forth in Paragraph Four, respondent had a reasonable basis from which to conclude that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

PAR. 6. In truth and in fact, at the time that respondent made the statements set forth in Paragraph Four, respondent had no reasonable basis from which to conclude that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

Therefore, the statements and representations set forth in Paragraphs Four and Five were, and are, deceptive or unfair acts or practices.

PAR. 7. Respondent has represented, through the use of the aforesaid advertisement and otherwise, directly and by implication, that the polyester cord construction of the KM 100 tire provides added strength at operating speeds and temperatures as compared to tires of other cord constructions.

At the time of said representations, respondent had no reasonable basis to support said representations pertaining to the strength of the KM 100 tire.

Therefore, the aforesaid acts and practices were, and are, deceptive or unfair.

PAR. 8. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been and now is in substantial competition in commerce with corporations, firms and individuals engaged in the sale and distribution of automobile tires of same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid unfair or deceptive statements, representations and practices has had the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondent's automobile tires. As a result thereof substantial trade was unfairly diverted to respondent from its competitors.

PAR. 10. The aforesaid acts and practices of respondent as herein alleged, were all to the prejudice and injury of the public and of respondent's competitors and constituted unfair or deceptive acts or practices

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in commerce and unfair methods of competition in commerce 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection 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 sixty (60) 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 K mart Enterprises Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 3000 West Fourteen Mile Road, Royal Oak, Mich.
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

It is ordered, That respondent K mart Enterprises, Incorporated, its successors and assigns, officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution

in commerce as "commerce" is defined in the Federal Trade Commission Act, of the respective products hereinafter referred to, do forthwith cease and desist from:

1. making, directly or by implication, any statement or representation in any advertising or sales promotional material as to the performance characteristics, construction or structure of any automobile tire vended by respondent or by any division, subdivision or subsidiary of respondent, unless at the time of such statement or representation respondent has a reasonable basis for such statement or representation, which shall consist of competent scientific tests, or other similar objective material, and where such statement or representation includes a comparison to other products, directly or by implication, such statement or representation shall be supported by competent scientific tests showing not less than a ninety-five percent confidence level when subjected to an appropriate statistical analysis.

2. failing to maintain and produce accurate records which may be inspected by Commission staff members upon reasonable notice:

- (a) which consist of documentation in support of any statement or representation referred to in Paragraph one (1) *supra*, included in advertising or sales promotional material disseminated by respondent, insofar as the text of such statement or representation is prepared, or is authorized and approved, by any person, who is an officer or employee of respondent, or of any division, subdivision or subsidiary of respondent, or by any advertising agency engaged for such purpose by respondent or by any such division, subdivision or subsidiary; and

- (b) which provided the basis upon which respondent relied as of the time the claim was made; and

- (c) which shall be maintained by respondent for a period of three years from the date such advertising or sales promotional material is last disseminated by said respondent or any division, subdivision or subsidiary of said respondent.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions, subdivisions, and subsidiaries and to each of its officers, agents, representatives or employees who are engaged in the preparation or placement of advertisements.

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

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of a successor corporation, or any other changes in the corporation which may materially affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days, and at the end of six (6) months after the effective date of the order served upon it, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.