

IN THE MATTER OF
FOOD FAIR STORES, INC., ET AL.

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

Docket 8935. Complaint, July 30, 1973-Decision, Sept. 30, 1975.

Consent order requiring Amterre Development, Inc., a Bala-Cynwyd, Pa., shopping center developer, among other things to cease maintaining resale prices, discouraging discount advertising and selling, and denying competitive prices to the public through the insertion of restrictive provisions in leases and agreements with shopping center tenants.

Appearances

For the Commission: *Jonathan E. Gaines* and *Maynard F. Thompson*.

For the respondents: *Alex Akerman, Shipley, Akerman, Stein & Kaps*, Wash., D.C. *Warren J. Kaps, Stein & Rosen*, New York City. *Glenn A. Mitchell, Stein, Mitchell & Mezines*, Wash., D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now

violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), and it appearing to this Commission that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint stating its charges with respect thereto as follows:

1. A. Respondent Food Fair Stores, Inc., (Food Fair) is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at 3175 John F. Kennedy Blvd., Philadelphia, Pa.

Food Fair is engaged in, among other things, the management and operation of a retail food chain, the retail sale of food and other merchandise and, through its subsidiary Amterre Development, Inc. (formerly Food Fair Properties, Inc.,) and other subsidiaries, the development, construction and management of shopping centers. In 1971 Food Fair was the fourth largest retail food chain in the United States with sales of approximately \$2 billion.

B. Respondent Amterre Development, Inc. (Amterre) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2 Decker Square, Bala-Cynwyd, Pa.

Amterre was formed by and is controlled by Food Fair for the purpose of developing, constructing and managing shopping centers. Food Fair has the exclusive right to the space set aside for a supermarket in each shopping center developed by Amterre. No other supermarket is permitted in these shopping centers without Food Fair's consent.

Amterre, with assets in 1971 of \$230 million and a total income of \$18 million, is the largest publicly-held shopping center development company in the United States. Through Amterre, Food Fair is presently operating 48 shopping centers throughout the Eastern portion of the United States and 36 free-standing commercial properties with total gross leasable area in excess of 9,000,000 square feet.

2. In the course and conduct of their business, respondents maintain and have maintained a substantial course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent Food Fair owns and operates in excess of six hundred food store units and department stores located in sixteen different States for which it purchases for resale, and through which, it sells goods in interstate commerce. Amterre, on its own behalf, and on behalf of Food Fair, owns and operates shopping centers in nine different States. In so doing Amterre has been, and is now, engaged in interstate lease negotiations and transactions with its tenants and prospective tenants.

3. Except to the extent that competition has been hindered, lessened and eliminated as set forth in this complaint, respondents Food Fair and Amterre, in the course and conduct of their business of selling, at retail, food and other merchandise, and of developing, constructing, and managing shopping centers, have been and are now in substantial competition with other corporations, individuals and partnerships.

4. In the course and conduct of their business, respondents are and have been engaged in unfair methods of competition and unfair acts and practices in commerce in that they have negotiated, executed and enforced and are now negotiating, executing and enforcing leases which control or eliminate discount sales, exclude discount stores and tend to establish and maintain prices at which or the price ranges within which shopping center tenants and their competitors must sell their merchandise. Additionally, respondents' lease provisions encourage each tenant to enforce price restrictions against its competitors. Pursuant to such lease provisions, respondents' tenant, The Felsway Corporation, has brought suit to enjoin price cutting competitors and eliminate price competition.

5. Through the negotiation, utilization and enforcement of these lease provisions, among others, respondents have entered into agreements which tend to fix prices and which otherwise restrain trade and have engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having issued a complaint which charges respondents Food Fair Stores, Inc. and Amterre Development Inc., with violating the Federal Trade Commission Act, and

The respondent Amterre Development Inc., and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Amterre Development Inc. of all the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission that the law has been violated as alleged in said complaint, and waivers and other provisions as required by the Commission's rules, and

The Commission having thereafter accepted the executed consent agreement and placed such agreement on the public record for a period of sixty days, now in further conformity with the procedure prescribed in Section 2.34 of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Amterre Development Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business in Bala-Cynwyd, Pa.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent Amterre Development Inc., and the proceeding is in the public interest.

ORDER

I

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

A. The term "respondent" refers to Amterre and its subsidiaries, officers, agents, representatives, employees, successors, and assigns, in their capacities as such. "Subsidiary" means a person, entity or corporation in which Amterre has voting control.

B. The term "shopping center" refers to a planned development of retail outlets, managed as a unit in relation to a trade area, which the development is intended to serve, and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

C. The term "tenant" refers to any occupant or potential occupant of retail space in any of respondent's shopping centers, whether as a lessee or owner of such space.

D. The term "retailer" refers to a tenant which sells merchandise or services to the public.

E. The terms "range of prices" and "price range" refer to such descriptive words as "popular priced," "medium priced," "high priced," "merchandise ranging in price from \$90 to \$190," and "the sale of merchandise at prices less than \$15." The terms "range of prices" and "price range" do not include references to the general quality of merchandise or services, explicitly characterized as such, that the tenant principally will offer.

F. The term "price line" refers to descriptive words identifying a particular retailer as an example of a category of merchants selling merchandise within a generally identifiable range of prices.

II

A. *It is ordered*, That respondent cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

1. specifies that any retailer in any of respondent's shopping

centers shall or shall not sell or offer to sell merchandise or services at any particular price or within any range of prices;

2. specifies that any retailer in any of respondent's shopping centers shall or shall not sell or offer to sell designated price lines of merchandise;

3. specifies that any retailer in any of respondent's shopping centers shall not be a discounteer or sell or offer to sell merchandise or services at discount prices;

4. specifies the content of or prohibits any type of advertising by a retailer, other than advertising within any of respondent's shopping centers, except that respondent may require a tenant to include the name, insignia, or other identifying mark of any of respondent's shopping centers in advertising pertaining to the tenant's store in any of respondent's shopping centers.

B. *It is further ordered*, That respondent will within thirty (30) days after service of this order mail a copy of Letter "A," attached hereto, to all tenants of its shopping centers whose leases make reference in the use clauses to the price or quality of the merchandise or services to be sold.

C. *It is further ordered*, That respondent cease and desist from entering into any agreement, directly or indirectly, with any tenant that said tenant may:

1. specify or control or may require respondent to specify or control prices, price ranges, or price lines of merchandise or services sold by any other retailer;

2. control or may require respondent to control discounting by any other retailer; or

3. exclude any retailer from any of respondent's shopping centers by reason of such retailer's discount selling or discount advertising.

D. *It is further ordered*, That respondent advise the Commission in writing within sixty (60) days of any occasion that:

1. a tenant disapproves the admission into any of respondent's shopping centers of any other retailer;

2. a tenant refuses to approve the renewal of another retailer's lease in any of respondent's shopping centers;

3. a tenant approves the admission of another retailer into any of respondent's shopping centers subject to conditions imposed by the tenant relating to the pricing, price ranges, price lines, trade names, store names, trademarks, brands or lines of merchandise, or the discounting practices or methods of such other retailer; or

4. a tenant enters into an agreement with respondent to become a tenant in any of respondent's shopping centers on condition that respondent refuse to renew the lease of another retailer.

III

It is further ordered, That respondent shall:

A. within thirty (30) days after service of this order upon respondent, notify each of its tenants of this order by providing each tenant with a copy thereof by registered or certified mail;

B. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

C. notify the Commission at least thirty (30) days prior to any change in the corporate respondent which may affect compliance obligations arising out of this order.

IV

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed with respect to respondent Food Fair Stores, Inc.

LETTER "A"

[On Official Amterre Development Inc. stationery]

Gentlemen:

Amterre Development Inc. has consented to the issuance by the Federal Trade Commission of an order which, among other things, prohibits Amterre from specifying that its tenants shall or shall not sell merchandise or services at any particular price or within any range of prices, and that its tenants shall or shall not sell designated price lines of merchandise. A copy of the order is enclosed.

Your lease describes the merchandise or services you are to sell in terms such as "popular priced," "medium priced," "high priced," "Medium to better quality," or the like. Please be advised that such language is intended only as a description of the general quality of the merchandise or services you sell. It is not intended and will not be enforced to affect the retail selling price of your merchandise or services. Pursuant to the terms of the order you are free to set the prices for your merchandise and services and are not required to adhere to any particular price, range of prices, or price lines expressed or implied in your lease or in any other agreement with the shopping center.

This letter shall not operate as a waiver of any rights which Amterre may now have to require you, except as your lease otherwise provides, to sell merchandise or services at a general quality level or levels.

IN THE MATTER OF
TRAVEL KING, INC., ET AL.

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

Docket 8949. Amended Complaint, May 17, 1974-Order, Sept. 30, 1975*

Order requiring four west coast travel agencies located in Seattle, Wash., and San Francisco, Calif., among other things to cease making false claims about "psychic surgery" and promoting tours for such surgery, which has been misrepresented as an actual surgical operation by which diseased tissue or disease-causing material is removed from the body using only the bare hands. The order further requires respondents to send notices to past purchasers and to those who inquire about such tours in the future warning them of the serious danger involved.

Appearances

For the Commission: *Gregory L. Colvin, Randall H. Brook, Barry E. Barnes and Rachel P. Goodisman.*

For the respondent: *David C. Stewart, DeGarmo, Leedy, Oles & Morrison, Seattle, Wash., Michael W. Palmer, Baker & McKenzie, San Francisco, Calif., Richard Kelleher and Douglas A. Baum, Kelleher, Murphy & Nelson, Jerry Kindinger, Ryan, Bush, Swanson & Hendel and Albert Hanan, Seattle, Wash.*

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Travel King, Inc., d/b/a Travel King, Inc. & Ramble Tours, Phil-Am Travel Agency, Inc., Gem Travel Service, Inc., and Ramble Travel and Tours, Inc., corporations; Yuda Galazan and Nyla Ford, individually and as officers and directors of Ramble Travel and Tours, Inc.; Ronald Brown, individually and as an officer of Travel King, Inc.; Adeline C. Heredia and Emile H. Heredia, individually and as officers of Phil-Am Travel Agency, Inc.; and Laurence C. Marquez and Marian E. Butterfield, individually and as officers of Gem Travel Service, Inc., hereinafter referred to as respondents, have violated the provisions of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint:

PARAGRAPH 1. Travel King, Inc., d/b/a Travel King, Inc. & Ramble Tours (hereinafter "Travel King"), is a Washington corporation, with its corporate office at 1200 - 153rd N.E., Bellevue, Wash., and a branch office at 1401 Seattle Tower Bldg., Seattle, Wash.

* Reported as amended by order of May 31, 1974 of the administrative law judge.