
IN THE MATTER OF
WARDS COMPANY, INC. T/A DIXIE HI-FIDELITY
WHOLESALEERS, ETC.

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

Docket C-2741. Complaint, Oct. 21, 1975--Decision, Oct. 21, 1975

Consent order requiring a Richmond, Va., mail-order seller of stereo equipment and components, and related merchandise, among other things to cease soliciting prepaid orders if respondent cannot ship ordered merchandise within a specified time period; failing to make refunds; failing to maintain records; failing to disclose handling and insurance costs; and misrepresenting any of its operating divisions as wholesalers.

Appearances

For the Commission: *Alan L. Cohen* and *Thomas J. Keary*.

For the respondents: *Robert A. Skitol* and *Robert L. Wald, Wald, Harkrader & Ross*, Wash., D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Wards Company, Inc., a corporation, doing business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi, 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 Wards Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 5021 Brook Rd., Richmond, Va. Such corporation does business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi.

Par. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of stereo equipment and components and other related merchandise to the public by mail order and through retail outlets.

PAR. 3. In the course and conduct of its business, respondent is causing, and for some time last past has caused, said merchandise, when sold, to be shipped from its place of business located in the Commonwealth of Virginia to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms and individuals engaged in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 5. In the course and conduct of its mail order business, as aforesaid, respondent offers merchandise for sale by means of advertisements, brochures, flyers, catalogs, letters, and oral representations by telephone. In connection with its aforesaid business and for the purpose of inducing the purchase of its said merchandise, respondent has made, and is now making, certain statements and representations with respect to delivery and the promptness with which orders will be filled.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following:

DIXIE, one of the largest stereo wholesalers, fills all your orders promptly.

We stock every item in this catalog and your order will be shipped promptly and insured.

PAR. 6. By and through the use of the statements and representations quoted in Paragraph Five hereof, and others of similar import and meaning but not expressly set forth herein, and by the offering of merchandise for sale, respondent has represented, and is now representing, directly or by implication, that merchandise ordered and

prepaid will be delivered within a reasonable period of time after receipt of a purchaser's order.

PAR. 7. In truth and in fact, respondent, in many instances, has not and is not now shipping merchandise within a reasonable period of time after receipt of a purchaser's prepaid order. Respondent, in many instances, ships merchandise many weeks after receipt of a purchaser's order.

Therefore, the statements and representations set forth in Paragraphs Five and Six, hereof, were and are unfair, false, misleading, and deceptive.

PAR. 8. In the further course and conduct of its mail order business and for the purpose of inducing the purchase of its said merchandise, respondent has distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. The purchaser, if he wishes to completely prepay his order, is required to calculate the postage or shipping charges based on the weight of the merchandise offered. However, the advertisements, brochures, flyers, catalogs, letters and other material soliciting orders do not provide the customer with postage or shipping rate charts.

Consequently, in many instances, purchasers have paid respondent more for postage or shipping than the actual postage or shipping charges incurred by respondent in mailing or shipping the merchandise, and said purchasers have not received from respondent a refund for their overpayments. Therefore, the failure of respondent to make refunds of postage or shipping overpayments, was and is unfair, misleading and deceptive.

PAR. 9. In the further course and conduct of its mail order business and for the purpose of inducing the purchase of its said merchandise, respondent has distributed advertisements, brochures, flyers, catalogs, letters or other material soliciting orders which provide the purchaser with order blanks. These materials do not disclose that handling or insurance costs will be charged to purchasers ordering from respondent, although such costs are regularly charged to the purchaser. Therefore, the failure of respondent to disclose the handling and insurance costs was, and is unfair, misleading and deceptive.

PAR. 10. By and through the use of the trade name Dixie Hi-Fidelity Wholesalers, and in conjunction with statements appearing in its advertisements, brochures, flyers, catalogs, letters, or other material soliciting orders, respondent has represented and does represent, directly or by implication, that it is a wholesaler and that its prices are wholesale prices and that in each instance the savings afforded to its purchasers is that amount which is realized by purchasers who buy at actual wholesale prices.

PAR. 11. In truth and in fact, respondent is not a wholesaler with respect to many of the articles offered for sale and sold by it, nor does it offer to sell, or sell, many of its articles of merchandise at wholesale prices but, to the contrary, the prices of many of such articles are in excess of the prices usually and customarily paid by retailers. Consequently, in many instances, the savings afforded is less than that amount which is realized by purchasers who buy at actual wholesale prices.

Therefore, the statements and representations set forth in Paragraph Ten, hereof, were and are false, misleading and deceptive.

PAR. 12. The use by respondent of the aforesaid unfair, false, misleading and deceptive statements, representations, acts and practices, and its failure to disclose material facts, as aforesaid, has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and complete and into the purchase of substantial quantities of respondent's products, and overpayment of postage or shipping charges, by reason of said erroneous and mistaken belief.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

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 Washington, D.C. Regional Office 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 of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Wards Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 5021 Brook Rd., Richmond, Va. Such corporation does business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi.

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

A

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

(1) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(2) "Receipt of payment" shall be deemed to be, (1) at the time respondent receives the order with payment enclosed either in cash or by check or (2) at the time respondent charges a purchaser's account for a credit order.

(3) "Prompt refund" shall mean a return of the full amount remitted by the purchaser or the crediting of the purchaser's account for the full indebtedness incurred for the unshipped merchandise within seven (7) working days of the date on which the purchaser's right to refund vests under the provisions of this order. Refunds shall be deemed made when one of the following is mailed to the purchaser by first class mail:

(a) cash, money order or check; or

(b) if respondent is the creditor, a copy of the credit memorandum which removes the charge from the purchaser's account; or

(c) the actual charge or sales document which would create an obligation by the purchaser to a third party creditor; or

(d) copy of the appropriate credit memorandum to the third party creditor which will remove the charge from the purchaser's account.

B

It is ordered, That respondent Wards Company, Inc., a corporation,

doing business as Dixie Hi-Fidelity Wholesalers and Dixie Hi-Fi, or under any name or names, and its officers, and respondent's representatives, agents, employees, successors and assigns directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of stereo equipment and components and other merchandise, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Soliciting orders for the sale of merchandise to be ordered by the purchaser through the mail on a prepaid basis, unless such merchandise is shipped within that time clearly and conspicuously stated in such solicitation or, if no time is stated, within thirty (30) days after receipt of payment and a properly completed order from the purchaser.

2. Failing to make, without prior demand, a prompt refund to the purchaser of all moneys received for merchandise solicited on a prepaid basis and ordered through the mails when the merchandise is not shipped:

(a) Within that time clearly and conspicuously stated in the solicitation to which the purchaser responded as the time in which shipment will be made, or

(b) If no time is stated, within thirty (30) days of receipt of the purchaser's payment by respondent.

Provided, however, That the inhibitions of Paragraph B(1) shall not apply if the provisions of Paragraph B(2) are complied with; *and, Provided further,* That Paragraph B(1) and Paragraph B(2) shall not apply under the following circumstances: where respondent, due to circumstances beyond its control, is unable to make shipment as required in Paragraph B(1) and respondent sends to the purchaser a notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. The notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the expiration of the thirty (30) day period, or that time stated in the solicitation. The notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, respondent receives a response from the purchaser requesting a refund, such refund shall be promptly made.

If no response is received from the purchaser and respondent does not ship the merchandise within the estimated date of shipment given in the above notice, and for each subsequent time respondent does not ship merchandise by the estimated date of shipment to which a purchaser has agreed, respondent must send to the purchaser an

additional notice of delayed shipment providing the purchaser with the opportunity to express his choice whether to cancel his order and receive a refund or be shipped the merchandise by a specified later date. This additional notice shall be sent by first class mail and accompanied by a self-addressed, postage paid device upon which the purchaser may indicate his choice, and mailed in advance of the estimated date of shipment given in the previous notice. This additional notice shall expressly advise the purchaser of the estimated date of shipment for his order. If, prior to shipment, the respondent receives a response from the purchaser requesting a refund, such refund shall be promptly made.

Provided further, however, That Paragraphs B(1) and B(2) shall not apply to any advertisement which:

(1) does not contain an order blank or other similar means to order merchandise from respondent;

(2) does not make any representation concerning the speed or promptness with which respondent ships merchandise to its customers; and

(3) does not offer specific items for sale at specified prices.

Provided further, however, That should the Federal Trade Commission promulgate a trade regulation rule or industry guide concerning Undelivered Mail Order Merchandise and Services, containing provisions comparable to, but less comprehensive or less restrictive than, the provisions of this order, nothing herein shall preclude respondent from exercising its right to petition for appropriate modification of this order under Section 3.72 or any other pertinent provision of the Commission's Rules of Practice or of law.

3. Failing to:

(a) Maintain a record of each complaint alleging failure to ship merchandise solicited and ordered on a prepaid basis, or of failure to make refund within the applicable period of time, as specified in Paragraphs B(1) and B(2) of this order, and the disposition of each such complaint. Such record shall be kept for a period of at least eighteen (18) months following the disposition of such complaint;

(b) Maintain records showing the employment of systems and procedures designed to comply with Paragraphs B(1) and B(2) of this order.

4. Failing to promptly refund any postage or shipping payments made by a purchaser which are in excess of the postage or shipping charges incurred by respondent in mailing or shipping the merchandise to the purchaser; *Provided, however,* That respondent may charge a flat percentage of the order price for postage or shipping and handling if that fact is clearly and conspicuously disclosed, orally or in writing, to

prospective purchasers before they order merchandise from respondent.

5. Failing to clearly and conspicuously disclose, orally or in writing, to prospective purchasers before they order merchandise from respondent, the actual handling and insurance costs which will be charged to the purchaser.

6. Representing, directly or by implication, in any advertisements, brochures, flyers, catalogs, letters or any other material soliciting orders, or in any of respondent's places of business open to the public, or otherwise representing, directly or by implication, that respondent or any of its divisions is a wholesaler, or that it or its division sells articles of merchandise at wholesale prices, unless respondent, or the division referred to, in fact:

(a) makes a substantial number of its sales to retailers in the ordinary course of business, and

(b) sells items which it offers at wholesale at prices which do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply, when purchased in the quantity offered for sale by respondent.

Provided, further, however, That respondent shall be permitted to phase out the use of the word "Wholesalers" in its trade name:

(a) in all advertisements, brochures, flyers, catalogs or any other material soliciting orders within six (6) months from the date this order is finally accepted;

(b) in all stationery, invoices and other business forms (and in-store promotional material) as the current supply is exhausted, but no later than six (6) months from the date this order is finally accepted; and

(c) in all store signs within eight (8) months from the date this order is finally accepted.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future employees or other persons engaged in the preparation and placing of respondent's advertisements, brochures, flyers, catalogs, letters or other material soliciting orders, and the offering for sale, or sale, of respondent's products, and secure from each such employee or other person a signed statement acknowledging receipt of said order.

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

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 of a successor corporation, the creation or dissolution of

Complaint

86 F.T.C.

subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall, within sixty (60) 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 they have complied with this order.
