

Complaint

87 F.T.C.

IN THE MATTER OF

THRIFTY DRUG STORES CO., INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE CLAYTON
ACT

Docket C-2816. Complaint, Apr. 13, 1976—Decision, April 13, 1976

Consent order requiring a Los Angeles, Calif., chain of retail drug and discount stores and retail sporting goods stores, among other things to cease knowingly inducing and receiving from its suppliers discriminatory promotional allowances, services, facilities, and net prices. Further, the order prohibits respondent from overcharging for promotional activities.

Appearances

For the Commission: *D. Kenneth Kaplan.*

For the respondent: *Henry C. Thumann, O'Melveny & Myers, Los Angeles, Calif.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. §45), and the Clayton Act, as amended, (15 U.S.C. §§13 and 21), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Thrifty Drug Stores Co. Inc., (Thrifty), a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts, and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, charging in that respect as follows:

PARAGRAPH 1. Respondent Thrifty Drug Stores Co. Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 5051 Rodeo Rd., Los Angeles, California.

PAR. 2. Respondent is now, and for many years past has been, engaged in the operation of a chain of retail drug and discount stores and a chain of retail sporting goods stores with total sales for its fiscal year ending August 31, 1974 of \$458,947,000. Thrifty currently operates over four hundred fifty (450) drug and discount stores under the trade names Thrifty Drug and Discount Stores, Giant T Stores, Discount Drug Stores and Thrifty Discount Stores and over thirty (30) sporting goods stores under the trade name Big 5. Approximately ninety percent of its drug and discount stores are located in California,

and the remainder are located in Arizona, Idaho, Nevada, Oregon, Utah and Washington. Thrifty's retail sales volume is the largest in California and the second largest in the nation among drug and discount stores. Since 1962, the company has more than doubled the number of its drug and discount store outlets.

PAR. 3. In the course and conduct of its business as herein described, respondent has engaged in and is presently engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and respondent has engaged in and is presently engaged in commerce or its acts and practices affect commerce as "commerce" is defined in the Federal Trade Commission Act, as amended. Thrifty purchases its products from suppliers located throughout the United States and causes such products to be transported from various States in the United States either to its stores which are located in various States, or to its three distribution centers located in California, from which the products are transported to its stores for the purpose of distribution and reselling said products. In addition, Thrifty places advertisements in commerce, and receives payments, allowances, and other things of value in commerce from such suppliers.

PAR. 4. Except to the extent competition has been lessened by reason of the acts and practices hereinafter alleged in Counts I and II, Thrifty is now, and for many years past has been, in competition in the purchase, sale and distribution of various drug and discount store products with other corporations, partnerships, firms and persons located in various States of the United States.

COUNT I

Alleging violations of Section 5 of the Federal Trade Commission Act, as amended:

PAR. 5. Each of the allegations contained in Paragraphs One through Four herein are hereby realleged and made part of this Count with the same effect as though herein again set forth in full.

PAR. 6. In the course and conduct of its business in or affecting commerce, Thrifty is now, and for many years past has been knowingly inducing, inducing and receiving, or receiving from some of its suppliers, contracts for payment or payment of something of value to or for Thrifty's benefit as compensation or in consideration for services or facilities furnished by or through Thrifty in connection with Thrifty's handling, offering for sale or selling of products sold to Thrifty by such suppliers.

PAR. 7. Among the methods by which respondent has induced and induces such discrimination, but not all inclusive thereof, are the following examples:

(a) Thrifty has induced, induced and received, or received the participation of some of its suppliers in Thrifty's "educator service program" whereby such suppliers have contracted to receive or received from Thrifty certain in-store services by educator service program personnel relating to the handling, offering for sale or selling of the suppliers' products in Thrifty's retail stores, and, in connection with which, these suppliers have contracted to pay or paid to Thrifty something of value. During Thrifty's fiscal year ending August 31, 1974, Thrifty received in connection with this program in excess of \$2,000,000 from participating suppliers.

(b) Thrifty has induced, induced and received, or received the participation of some of its suppliers in sales meetings or trade shows conducted by Thrifty at various times, during which Thrifty personnel have demonstrated certain products of participating suppliers to some of Thrifty's employees, and in connection with which, participating suppliers have contracted to pay or paid to Thrifty something of value. During Thrifty's fiscal year ending August 31, 1974, Thrifty received in connection with this program in excess of \$150,000 from participating suppliers.

(c) Thrifty has induced, induced and received, or received from some of its suppliers contracts for payment or payment of something of value in connection with which Thrifty places or obtains the placement of advertisements promoting the sale of said suppliers' products in Thrifty's stores. Some of said payments were in excess of said suppliers' cooperative advertising plans or were not made in connection with any cooperative advertising plan available on a proportionally equal basis to all of Thrifty's competitors. The payments which Thrifty received in connection with the aforesaid cooperative advertising have been and are substantial.

(d) Thrifty has induced, induced and received, or received from some of its suppliers contracts for payment or payment of something of value in connection with the carpeting of some portion of some of Thrifty's stores where the participating suppliers' products are located. The payments which Thrifty received in connection with the aforesaid carpeting have been and are substantial.

PAR. 8. In the course and conduct of its business in or affecting commerce, Thrifty is now, and for many years past has been knowingly inducing, inducing and receiving, or receiving from its suppliers, services or facilities or contributions toward the furnishing of services or facilities to be used in connection with Thrifty's handling, offering for sale or selling of said products purchased by Thrifty for resale from such suppliers.

PAR. 9. Among the methods by which respondent has induced and

induces such discrimination, but not all inclusive thereof, are the following examples:

(a) Thrifty has induced, induced and received, or received from some of its suppliers the installation of carpeting used by Thrifty in connection with Thrifty's handling, offering for sale or selling of such supplier's products. The value of said services and facilities received by Thrifty has been and is substantial.

(b) Thrifty has induced, induced and received, or received at various times from some of its suppliers the services of agents, employees or representatives of such suppliers in connection with the educator service program and sales meetings or trade shows conducted by Thrifty, which services are used in conjunction with Thrifty's handling, offering for sale and selling of such suppliers' products. The value of said services received by Thrifty has been and is substantial.

PAR. 10. Many of the aforesaid suppliers did not affirmatively offer or otherwise affirmatively make available to all of their customers competing with Thrifty in the distribution and resale of their respective products, contracts for payment, payments, allowances, services, facilities or other things of value on terms proportionally equal to those granted Thrifty.

PAR. 11. When Thrifty induced, induced and received, or received the aforesaid payments, allowances, services, facilities, or other things of value from such suppliers, Thrifty knew or should have known that it was inducing, inducing and receiving, or receiving contracts for payment, payments, allowances, services, facilities or other things of value from suppliers which said suppliers were not affirmatively offering or otherwise affirmatively making available on proportionally equal terms to all customers of such suppliers who were competing with Thrifty.

PAR. 12. The methods, acts and practices of Thrifty herein alleged in Count I, and hereafter alleged in Count II, constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

COUNT II

Alleging a violation of Section 2(f) of the Clayton Act, as amended:

PAR. 13. Each of the allegations contained in Paragraphs One through Four herein are hereby realleged and made part of this Count with the same effect as though herein again set forth in full.

PAR. 14. In the course and conduct of its business in commerce, Thrifty is now, and for many years past has been, knowingly inducing, inducing and receiving, or receiving from some of its suppliers,

discriminatory prices, discounts, allowances, rebates and terms and conditions of sale which favor Thrifty.

PAR. 15. Among the methods by which respondent has induced and induces such discrimination, but not all inclusive thereof, are the following examples:

(a) Thrifty has induced, induced and received, or received from participating suppliers in Thrifty's educator program, sales meeting program, cooperative advertising and other of Thrifty's programs, compensation or consideration in excess of Thrifty's expenses incurred in connection with the operation of such programs and thus receives from these suppliers overpayments for participation in such programs. In addition, in connection with cooperative advertising placed in newspapers, Thrifty receives rebates from these newspapers which it does not refund to its participating suppliers. The receipt of these overpayments and rebates constitutes the receipt of a reduction in net price on products sold to Thrifty by such suppliers. During Thrifty's fiscal year ending Aug. 31, 1974, the amount of such overpayments and rebates exceeded \$800,000.

(b) Thrifty has induced, induced and received, or received from some of its suppliers price reductions, discounts, allowances, rebates or terms and conditions of sale better than those otherwise granted to Thrifty and its competitors and other things of value in connection with a promotion concerning the opening of Thrifty's four hundredth (400th) drug and discount store. The payments Thrifty has received in connection with this program have been and are substantial.

PAR. 16. Many of the aforesaid suppliers did not affirmatively offer or otherwise affirmatively make available to all of their customers competing with Thrifty in the distribution and sale of their respective products, prices, discounts, allowances, overpayments, rebates, terms and conditions of sale and other things of value on terms proportionally equal to those granted Thrifty.

PAR. 17. When Thrifty induced, induced and received, or received the aforesaid prices, discounts, allowances, overpayments, rebates, terms and conditions of sale, or other things of value from such suppliers, Thrifty knew or should have known that it was inducing, inducing and receiving, or receiving prices, discounts, allowances, overpayments, rebates, terms and conditions of sale or other things of value from suppliers which said suppliers were not affirmatively offering or otherwise affirmatively making available on proportionally equal terms to all customers of such suppliers who were competing with Thrifty.

PAR. 18. The effect of such discrimination in net price induced, induced and received, or received by Thrifty has been and may be to

substantially lessen competition in the lines of commerce in which the acceding suppliers, said suppliers' competitors, respondent, and respondent's competitors, as described, are engaged, or to injure, destroy or prevent competition between the acceding suppliers and their competitors, and between respondent and its competitors.

PAR. 19. The acts and practices of Thrifty, as herein alleged in Count II, are in violation of Section 2(f) of the Clayton Act, as amended (15 U.S.C. §13).

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 Los Angeles 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 Thrifty Drug Stores Co. Inc. 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 place of business located at 5051 Rodeo Rd., Los Angeles, 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.

Decision and Order

87 F.T.C.

ORDER

I

It is ordered, That respondent Thrifty Drug Stores Co. Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or indirectly through any corporation, subsidiary, division or other device, in connection with the processing, handling, purchasing, or offering to purchase of products or commodities by or on behalf of respondent for distribution to or resale by respondent's drug and discount stores, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, and the Clayton Act, as amended, do forthwith cease and desist from:

1. Inducing, inducing and receiving, or receiving anything of value from any supplier as compensation for or in consideration of any service or facility furnished by or through respondent in connection with the advertising, processing, handling, display, or anything else in the nature of promotional assistance, of any product or commodity of such supplier (such as but not limited to, the educator service program, sales meetings, trade shows or cooperative advertising) when respondent knows or should know that such compensation or consideration is not being affirmatively offered or otherwise affirmatively made available by such supplier on proportionally equal terms to all of its other customers who compete with respondent in the sale or distribution of such supplier's products, including retailer customers who do not purchase directly from such supplier.

2. Inducing, inducing and receiving, or receiving any service or facility from any supplier in connection with the advertising, processing, handling, display, or anything else in the nature of promotional assistance, of any product or commodity of such supplier (such as but not limited to, carpeting provided by a supplier or promotional assistance provided by a representative of a supplier) when respondent knows or should know that any such service or facility is not being affirmatively offered or otherwise affirmatively made available by such supplier on proportionally equal terms to all of its other customers who compete with respondent in the distribution and resale of such supplier's products, including retailer customers who do not purchase directly from such supplier.

3. Inducing, inducing and receiving, or receiving, anything of value from any supplier as compensation for or in consideration of any service or facility furnished by or through respondent in connection with the advertising, processing, handling, display, or anything else in the nature of promotional assistance, of any product or commodity of

such supplier to the extent that such compensation or consideration exceeds respondent's actual costs incurred in the rendering of such service or in the furnishing of such facility.

4. Knowingly inducing, inducing and receiving, or receiving, in connection with any promotional activity concerning products or commodities sold or offered for sale in respondent's stores, any net price for such products or commodities from any supplier which price respondent knows or should know is:

(a) Below the net price at which such products of like grade and quality are being sold by such seller to any other purchaser with whom respondent competes or with whose customer or customers respondent competes; and

(b) Not a price differential which makes only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities by which said products or commodities are sold and delivered by such seller; and

(c) Not a price change in response to changing conditions affecting the market for or marketability of such products or commodities, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

5. *Provided, however,* that this order shall not be construed to prohibit respondent from selling to other persons, corporations or firms, including suppliers, advertising time purchased by respondent on television or radio programs where such advertising time is not used to advertise or promote respondent in any way and is not otherwise prohibited by any law or regulation. Such sale by respondent of advertising time on television or radio programs shall not be at rates greater than those that would be otherwise available to such persons, corporations or firms directly from the television or radio station if such time were available for sale.

6. *Provided, however,* that paragraphs one, two, and four of this order shall not be effective unless respondent knows or should know that such compensation, consideration, service, facility or price is not being offered to respondent in good faith to meet equivalent compensation, consideration, service, facility or an equally low price offered by a competitor of the supplier. *Provided further, however,* that the above proviso shall not relieve respondent of responsibility for any violation of paragraphs one, two or four of this order where the compensation, consideration, service, facility or equally low price is induced, induced and received, or received by respondent in response to

any compensation, consideration, service, facility or net price illegally induced, induced and received, or received by respondent.

II

It is further ordered, That respondent shall distribute a copy of the complaint and order in this matter to all of its present and future employees who are engaged in purchasing activities related to its drug and discount stores, or the supervision of such activities, and all present drug and discount store division managers, district managers and store managers. In addition, respondent shall cause the distribution by first class mail of a copy of the complaint and order in this matter to all suppliers who at any time since September 1, 1969, have sold any products or commodities to respondent for distribution or resale in its drug and discount stores.

III

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in or to the corporation, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, in the creation or dissolution of any subsidiary or in any other change in the corporation which may affect compliance obligations under this order.

IV

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 it has complied with this order.

IN THE MATTER OF
KRAFTCO, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF THE
CLAYTON ACT

Docket 9035. Complaint, June 17, 1975—Decision, April 26, 1976

Consent order requiring Richard C. Bond to cease serving simultaneously on the board of directors of Kraftco, Inc., a Glenview, Ill., manufacturer and seller of margarine, edible oils and barbecue sauce, and as a director of any of Kraftco's competitors.

Appearances

For the Commission: *Ronald A. Bloch, Clinton R. Batterton and Joseph Tasker, Jr.*

For the respondents: *David C. Bogan and C. Lee Cook, Jr., Chadwell, Kayser, Ruggles, McGee & Hastings, Chicago, Ill. Howard Hoosin and William G. Taffee, Glenview, Ill. William E. Willis, Sullivan & Cromwell, New York City. Fredic L. Ballard, Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have been and are in violation of the provisions of Section 8 of the Clayton Act, as amended, and Section 5(a)(1) of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kraftco, Inc. (hereinafter "Kraftco") is a Delaware corporation, and maintains its principal office at Kraftco Court, Glenview, Illinois. Kraftco has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 2. Respondent SCM Corporation (hereinafter "SCM") is a New York corporation, and maintains its principal office at 299 Park Ave., New York, New York. SCM has capital, surplus, and undivided profits aggregating more than one million dollars, and is engaged in whole or in part in commerce as "commerce" is defined in Section 1 of the Clayton Act and Section 4 of the Federal Trade Commission Act.

PAR. 3. Respondent Richard C. Bond is a resident of the Commonwealth of Pennsylvania.