

Complaint

90 F.T.C.

IN THE MATTER OF
DAYCO CORPORATION

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

Docket C-2905. Complaint, Oct. 27, 1977 — Decision, Oct. 27, 1977

This consent order, among other things, requires a Dayton, Ohio manufacturer and importer of occupational safety products and equipment to cease misrepresenting that its products meet non-existent "government standards," or that they are approved, endorsed or required by the Occupational Safety and Health Administration (OSHA). The firm is also required to cease using, or licensing the use of the "OSHA-SPEC" trademark, and to take steps to prevent the importation of "OSHA-SPEC" branded goods. Additionally, the order prohibits the company from publishing quotations from the OSHA Act or regulations, without including all relevant portions of the quoted section.

Appearances

For the Commission: *Sharon J. Devine* and *Allan M. Huss*.

For the respondent: *Sara Jane Little*, Dayton, Ohio.

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 Dayco Corporation, a corporation, 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. For purposes of this complaint, the following definitions shall apply:

(a) "OSHA" means the Occupational Safety and Health Administration, an agency of the United States Government established pursuant to authority granted to the Secretary of Labor by the OSHA Act.

(b) "OSHA Act" includes the Williams-Steiger Occupational Safety and Health Act of 1970, 84 Stat. 1593, 29 U.S.C. 651-678 (1975), and the regulations promulgated thereunder, 29 C.F.R. 1900, *et seq.* (1976).

(c) "Hazardous condition" means a circumstance or set of circumstances against which an employer must take precaution(s) in order to comply with the OSHA Act.

PAR. 2. Respondent Dayco Corporation 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 333 West First St., in the City of Dayton, State of Ohio.

PAR. 3. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale, and distribution to the public of general industrial products and equipment, including occupational safety products and equipment.

PAR. 4. In the course and conduct of its aforesaid business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its places of business in the various states to purchasers thereof located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. In the course and conduct of its aforesaid business, respondent caused to be registered by the United States Commissioner of Patents and Trademarks, a trademark consisting of the words "OSHA-SPEC." The aforesaid mark was placed upon the Principal Register and given registration number 962327 on July 3, 1973, and was registered for use upon plastic sheet goods and other goods of International Trademark Class 17.

PAR. 6. In the course and conduct of its aforesaid business, respondent, by the use of its registered trademark, "OSHA-SPEC," in connection with the manufacturing, advertising, offering for sale, and sale of its occupational safety products and equipment, represents to purchasers and prospective purchasers, directly or by implication, that:

(a) Products and equipment advertised, offered for sale, sold, or distributed in conjunction with the "OSHA-SPEC" mark are approved or endorsed by OSHA.

(b) The use of all products and equipment advertised, offered for sale, sold, or distributed in conjunction with the "OSHA-SPEC" mark constitutes compliance with the OSHA Act for protection against hazardous conditions.

(c) All products and equipment advertised, offered for sale, sold, or distributed in conjunction with the "OSHA-SPEC" mark meet the standards and requirements prescribed or referenced by the OSHA Act.

PAR. 7. In truth and in fact:

(a) OSHA does not approve or endorse any products or equipment.

(b) The use of certain products advertised, offered for sale, sold, or distributed in conjunction with the "OSHA-SPEC" mark does not

constitute compliance with the OSHA Act for protection against certain hazardous conditions.

(c) The OSHA Act does not prescribe or reference standards and requirements for certain products and equipment advertised in conjunction with the "OSHA-SPEC" mark.

Therefore, the representations, acts, and practices as set forth in Paragraphs Six and Seven hereof were and are unfair, misleading, and deceptive.

PAR. 8. In the further course and conduct of its business as aforesaid, respondent is now, and for some time last past has been, printing and distributing to the public at large a publication entitled "OSHA-SPEC Buyer's Guide", which contains descriptions and pictures of products offered for sale by respondent, together with direct or paraphrased quotations from the OSHA Act.

By and through the publication and dissemination of this publication, and certain quotations which are incomplete therein, respondent represents to purchasers and prospective purchasers that:

(a) Certain products and equipment of the type offered for sale in the "OSHA-SPEC Buyer's Guide" are required to be used by purchasers to comply with the OSHA Act.

(b) In certain instances, no other products and equipment except the type offered for sale, or no other methods of compliance are acceptable for use in situations where hazardous conditions exist.

PAR. 9. In truth and in fact:

(a) Products and equipment of the type offered for sale in the "OSHA-SPEC Buyer's Guide" are not necessarily required to be used by purchasers to comply with the OSHA Act.

(b) In certain instances, alternative methods of compliance, or the use of products and equipment other than the type featured in the "OSHA-SPEC Buyer's Guide" are allowable under the OSHA Act.

Therefore, the representations, acts, and practices as set forth in Paragraphs Eight and Nine hereof were and are unfair, misleading, and deceptive.

PAR. 10. In the conduct of its aforesaid business, at all times mentioned herein, respondent has been in substantial competition in and affecting commerce with corporations, firms, and individuals in the offering for sale, sale, and distribution of safety products and equipment of the same general kind and nature as those sold by respondent.

PAR. 11. The use by respondent of the trademark "OSHA-SPEC" and the aforesaid false, misleading, and deceptive statements, representations, acts, and practices, has had, and now has, the capacity and tendency to lead members of the purchasing public into

the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of substantial quantities of respondent's products and equipment by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of respondent 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 and affecting commerce and unfair and deceptive acts and practices in and affecting 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 Cleveland 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 the 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 Dayco Corporation 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 333 West First St., Dayton, Ohio.

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

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

(a) "OSHA" means the Occupational Safety and Health Administration, an agency of the United States Government established pursuant to authority granted to the Secretary of Labor by the OSHA Act.

(b) "OSHA Act" includes the Williams-Steiger Occupational Safety and Health Act of 1970, 84 Stat. 1593, 29 U.S.C. 651-678 (1975), and the regulations promulgated thereunder, 29 C.F.R. 1900, *et seq.* (1976).

(c) "Hazardous condition" means a circumstance or set of circumstances against which an employer must take precaution(s) in order to comply with the OSHA Act.

It is ordered. That respondent Dayco Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of products or equipment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, orally or in writing, or by any other means:

(1) That any product or equipment advertised, offered for sale, sold, or distributed by respondent is approved or endorsed by OSHA or by any other governmental agency, *provided, however*, that this subparagraph shall not prohibit statements that any product or equipment is certified, approved, or endorsed by a governmental agency when, in fact, such product or equipment has been certified, approved, or endorsed by such agency.

(2) That the use of any product or equipment advertised, offered for sale, sold, or distributed by respondent constitutes compliance with the requirements of the OSHA Act:

(a) When hazardous conditions exist and the use of such product or equipment does not constitute compliance with the standards prescribed or referenced by the OSHA Act for such hazardous conditions;

(b) When the use of that product or equipment to protect against certain specific hazardous conditions is contra-indicated, unless respondent clearly and conspicuously discloses the specific conditions for which the use of the product or equipment is contra-indicated.

(3) That any product or equipment advertised, offered for sale, sold, or distributed by respondent meets the standards or requirements

prescribed or referenced by the OSHA Act when, in fact, no such standards or requirements exist.

It is further ordered, That respondent cease and desist from using the trademark "OSHA-SPEC" in conjunction with any product or equipment, or in conjunction with the advertising, offering for sale, selling, or distribution thereof; and any other title, corporate name, trade name, trademark, whether registered or not, or any other designation or device which in itself represents, directly or by implication, that respondent's occupational safety products or equipment are approved, endorsed, or accepted by, or connected or associated with, any agency or instrumentality of the United States Government. *Provided, however,* that respondent shall be allowed to disseminate, until December 31, 1977, existing stocks of its 1977 catalog as are in existence upon the date this order becomes final. Respondent shall not cause or permit the placement of any advertisement using the OSHA-SPEC mark after the date this order becomes final. The display of advertisements placed in the "Yellow Pages" prior to the date this order becomes final, which cannot be discontinued by respondent, shall not be deemed a violation of this order.

It is further ordered, That respondent cease and desist from assigning or licensing the use of the trademark "OSHA-SPEC" by any person, partnership, or corporation.

It is further ordered, That, within thirty (30) days after this order becomes final, respondent shall take such steps as are necessary to prevent importation into the United States of goods bearing, or sold in conjunction with, the "OSHA-SPEC" trademark, including the deposit of the mark with the Department of the Treasury, Bureau of Customs, pursuant to 19 U.S.C. 1526.

It is further ordered, That respondent cease and desist from reproducing the text, in whole or in part, of the OSHA Act in any advertisement, catalog, or other printed matter which is, or which is designed to be, disseminated by respondent to its customers, unless respondent clearly and conspicuously reproduces such portion of the regulatory section sufficient to disclose alternative methods of compliance, if any, or references to pertinent exceptions, if any, and underlines any portion of the section that describes or permits a method or methods of compliance which differ(s) from the primary method of providing hazard protection referred to by pertinent regulatory sections. *Provided, however,* that this paragraph shall not prohibit respondent from reproducing the section numbers and corresponding captions used in the OSHA Act to identify subject matter.

It is further ordered, That respondent shall forthwith distribute a

copy of this order to each of its operating divisions and subsidiaries and to all present and future corporate officers, field, sales, and office personnel, which manufacture or sell occupational safety products and equipment, and prominently post a copy of this order in each office affected by this order.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporation 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.

It is further ordered, That respondent shall, within sixty (60) days after service of it upon 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
EAST PROVIDENCE CREDIT UNION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2906. Complaint, Oct. 27, 1977 — Decision, Oct. 27, 1977

This consent order, among other things, requires an East Providence, R.I. credit union to cease failing to provide consumers, in connection with the extension of credit, such material and disclosures as are required by Federal Reserve Board regulations.

Appearances

For the Commission: *William P. McDonough.*

For the respondent: *Albert B. West, Providence, R.I.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that East Providence Credit Union, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and the implementing regulation promulgated under the Truth in Lending 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 East Providence Credit Union is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island and Providence Plantations, with its principal office and place of business located at 15 Circle St., East Providence, Rhode Island.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of lending money to the general public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent regularly extends, and for some time last past has regularly extended consumer credit, as "consumer credit" is defined in Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

PAR. 4. Subsequent to July 1, 1969, respondent, in the ordinary course of its business, as aforesaid, has caused and is causing to be