

Complaint

93 F.T.C.

IN THE MATTER OF

THE ADVERTISING CHECKING BUREAU, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2947. Complaint, January 4, 1979 — Decision, January 4, 1979*

This consent order, among other things, requires a New York City administrator and auditor of cooperative advertising programs to cease designing or implementing cooperative advertising programs for their clients which limit or restrict the rights of dealers to obtain cooperative advertising allowances for merchandise they have advertised or sold at other than regular or suggested retail prices.

*Appearances*For the Commission: *Jeffrey Klurfeld.*For the respondent: *Michael W. Palmer, Baker & McKenzie, San Francisco, Calif. and Abner J. Golieb, Golieb & Golieb, New York City.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Advertising Checking Bureau, Inc. has violated the provisions of Section 5 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 as follows:

PARAGRAPH 1. Respondent The Advertising Checking Bureau, Inc. ("ACB") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 353 Park Ave. South, New York, New York. ACB is the parent corporation of four corporate subsidiaries which respectively maintain offices in Chicago, Illinois; San Francisco, California; Memphis, Tennessee; and Columbus, Ohio.

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

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of, any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

PAR. 2. ACB is now and has been for many years engaged in administering or auditing cooperative advertising programs on behalf of clients; it has also assisted in the design or implementation of such programs. ACB has been retained by over 400 prominent manufacturers of branded products to perform cooperative advertising services. Sales of these clients' products represent a significant volume of commerce in such industries as wearing apparel, footwear, cosmetics and watches. Annually, ACB processes over one million claims for cooperative advertising allowances that are submitted by dealers of these clients. In addition to its cooperative advertising services, ACB monitors newspapers to determine the content and frequency of advertisements disseminated by a company's dealers and those of a competitor's dealers. In this connection, it offers a tearsheet service and prepares comprehensive retail store advertising reports.

PAR. 3. The acts and practices of ACB are in or affect commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth herein, every client's dealers have been and are now in substantial competition with other dealers of the same client.

PAR. 5. ACB has assisted clients to design or implement, or has itself administered or audited on behalf of clients, cooperative advertising programs or plans which limit or restrict the rights of dealers to obtain cooperative advertising credits or allowances for any merchandise which has been:

- a. Sold or advertised at other than the dealers' regular selling price.
- b. Sold or advertised at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Sold or advertised at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Sold or advertised using a price comparison.

PAR. 6. The administering or auditing by respondent, or respondent's assisting in the design or implementation of, cooperative advertising programs or plans with any of the limitations or restrictions described in Paragraph Five hereinabove has the capacity, tendency and effect of establishing, maintaining, fixing, stabilizing or otherwise illegally influencing the resale prices of

dealers in clients' products, and has had and still has the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among those dealers selling a client's products.

PAR. 7. The aforesaid acts and practices of respondent have injured, hindered, suppressed, lessened or eliminated actual and potential competition in a wide variety of products, and thus are to the prejudice and injury of the public; and constitute unfair methods of competition in or affecting commerce or unfair 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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 The Advertising Checking Bureau, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 353 Park Ave. South, in the City of New York, State of New York.

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

"Client" is defined as any person, partnership, corporation or firm which has retained The Advertising Checking Bureau, Inc. to conduct, administer or audit, or to assist in the design or implementation of any cooperative advertising program or portion thereof.

"Dealer" is defined as any person, partnership, corporation or firm which is eligible to participate in any client's cooperative advertising program.

I

It is ordered, That respondent The Advertising Checking Bureau, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the designing, implementing, conducting, administering or auditing of any cooperative advertising program, or portion thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

Designing, implementing, conducting, administering or auditing any plan, program or scheme, in whole or in part, in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the following:

- a. Selling or advertising any product at other than the dealer's regular selling price.
- b. Selling or advertising any product at a sale price, at a discount price, at a promotional price, at a reduced price, at an off-price, or at a mark-down.
- c. Selling or advertising any product at less than the suggested retail price, at less than the preticketed price, or at less than any minimum resale price.
- d. Selling or advertising any product using comparative prices.

II

Any cooperative advertising plan or program which limits or restricts any dealer from obtaining cooperative advertising credits or

allowances for the advertising of close-outs, irregulars or seconds shall not be deemed to violate this order.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after service of this order, mail under separate cover a copy of this order and complaint to every client whose cooperative advertising program is designed, implemented, conducted, administered or audited by respondent in such manner as to restrict, condition or limit the right of any dealer to obtain cooperative advertising credits or allowances because of any of the restrictions or limitations contained in Paragraph I hereinabove. An affidavit of mailing shall be sworn to by an official of respondent verifying that said mailing was performed.

2. Within sixty (60) days after service of this order, distribute a copy of this order to each of its operating divisions and subsidiaries and to all officers, sales personnel and auditing personnel, and secure from each such entity or person a signed statement acknowledging receipt of said order.

IV

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

V

It is further ordered, That respondent 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.