

Complaint

93 F.T.C.

IN THE MATTER OF
ZAYRE CORPORATION

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

Docket C-2951. Complaint, Jan. 19, 1979 — Decision, Jan. 19, 1979

This consent order, among other things, requires a Framingham, Mass. discount department store chain to cease inducing or receiving discriminatory promotional allowances, services or facilities from its suppliers; and prohibits the firm from boycotting or decreasing its purchases from recalcitrant suppliers. The company is also required to maintain specified records for a five-year period; and to bear all costs of any trade show it sponsors, organizes or directs.

Appearances

For the Commission: *David W. DiNardi* and *Norman H. Jackman*.
For the respondent: *Harry L. Shniderman, Covington & Burling*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Zayre Corp., a corporation, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and believing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows.

I. Respondent

PARAGRAPH 1. Respondent Zayre Corp. 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 770 Cochituate Road, Framingham, Massachusetts.

PAR. 2. Respondent is now and for many years has been engaged in the business of selling general merchandise to the public at retail. Respondent operates a chain of discount department stores which sell a large variety of clothing, hard goods, and other general merchandise. There are presently approximately two hundred and sixty department stores in respondent's chain, which stores are located in twenty-six states in the eastern half of the United States. Its sales in fiscal 1977 amounted to \$1,160,572,000.

PAR. 3. In the course and conduct of its business, respondent is now and has been in competition with other corporations, persons, firms, and partnerships in the purchase, sale, and distribution of clothing,

hard goods, and general merchandise, except to the extent limited or restrained by the practices identified hereinafter.

II. Commerce

PAR. 4. In the course and conduct of its business, respondent has been and is now engaged in activities which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, in the following manner:

(a) Respondent purchases for resale a great variety of general merchandise from a large number of suppliers located throughout the United States. Respondent causes these products to be transported from the places of manufacture or purchase to its stores or warehouses located in various states throughout the eastern half of the United States for resale to the general public. In many instances, respondent causes merchandise delivered to its warehouses to be transported to its stores located in other states.

(b) In addition, respondent disseminates advertising in commerce and receives payments in commerce from suppliers for advertising and promotional services and facilities, including those described hereinafter.

III. Inducing Discriminatory Allowances

PAR. 5. In the course and conduct of its business in or affecting commerce, respondent has knowingly induced and received, or received, from some of its suppliers, the payment of something of value to respondent or for respondent's benefit, as compensation for or in consideration of services or facilities furnished by or through respondent in connection with respondent's offering for sale, or sale, of products sold to respondent by the aforesaid suppliers. In particular:

(a) In July of 1972, respondent held a trade show in Miami Beach, Florida, at which products of its suppliers were displayed. This trade show was organized, directed, and conducted by respondent and was attended by respondent's officials and employees, as well as by a substantial number of respondent's suppliers. The show was not open to the public.

(b) Respondent solicited many of its suppliers to participate in said trade show and induced from each such participating supplier payment for the rental of booth space at said trade show. The amount of such money induced and received, or received, by respondent from participating suppliers was substantial. Approxi-

mately 190 suppliers paid \$700,000 in financial payments, allowances and other things of value to proposed respondent.

(c) In the course and conduct of said trade show, respondent required each participating supplier to provide valuable services, including staffing the booths rented by said suppliers from respondent and demonstrating and promoting the products displayed therein. In addition to the furnishing of such services, other services were performed by suppliers which aided said respondent in the resale of suppliers' products. The value of such services induced and received, or received, by respondent was substantial.

(d) Respondent threatened to eliminate or boycott or decrease purchases from, or has eliminated or boycotted or decreased purchases from, suppliers which refused to participate in said trade show.

PAR. 6. Some of respondent's suppliers who participated in the aforesaid trade show did not offer or otherwise make available to all their customers competing with respondent in the sale and distribution of their respective products payments, allowances, services, or other things of value, for advertising and promoting such products, on proportionally equal terms to those granted respondent in connection with its trade show.

PAR. 7. Furthermore, respondent has also knowingly solicited and induced from a major supplier, discriminatory payments for services in connection with the resale of certain products in the regular course of its business during the years 1972, 1973, and 1974. Respondent has received substantial sums from this supplier for each of the years 1972, 1973, and 1974.

PAR. 8. When respondent induced and received, or received, such payments, allowances, services, facilities, or other things of value from suppliers, said respondent knew or should have known that it was inducing and receiving, or receiving, payments, allowances, services, facilities, or other things of value from suppliers, which said suppliers were not offering or otherwise making available on proportionally equal terms to all of the suppliers' other customers who were competing with respondent in the sale and distribution of their respective products.

PAR. 9. The methods, acts, and practices of respondent, as herein alleged, are all to the prejudice of the public and constitute unfair methods of competition in or affecting commerce and unfair acts and practices in or affecting commerce within the intent and meaning of and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

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 Boston 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, its attorney, 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 Zayre Corp. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 770 Cochituate Road, Framingham, Massachusetts.
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

I

It is ordered, That Zayre Corp., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the purchase in or

affecting commerce, or receipt of merchandise on consignment in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, of products for resale by the respondent, or in connection with any other transaction between respondent and its various suppliers involving or pertaining to the regular business of the respondent in purchasing, promoting, advertising, distributing, and/or selling: books, phonograph records, photo finishing, photo film, photo equipment, franchise cosmetics, candy, health and beauty aids, home and office stationery, greeting cards, gift wrap, paper goods, party goods, and candles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Inducing and receiving, receiving, or contracting for the receipt of, any promotional allowance, payment, or other thing of value, solicited by respondent from any supplier, including any consignor or vendor, as compensation for or in consideration of any advertising or promotional service, furnished by or through respondent in connection with promotions originating with or sponsored by respondent, and involving the respondent's sale or offering for sale of the above-listed products, when respondent knows or should know that such compensation is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from any intermediary and competes with respondent in the resale of any such product of any such supplier.
2. Inducing and receiving, receiving, or contracting for the receipt of, the furnishing of any service or facility solicited by respondent from any supplier, including any consignor or vendor, in connection with promotions originating with or sponsored by respondent, and involving respondent's sale or offering for sale of the above-listed products, when respondent knows or should know that such service or facility is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from any intermediary and competes with respondent in the resale of any such product of any such supplier.
3. Eliminating or boycotting or decreasing purchases from any supplier or suppliers because of such suppliers' refusal to grant any allowance or payment in connection with the processing, handling, sale, or offering for sale of the above-listed products, or refusal to furnish any service or facility connected with respondent's sale or

offering for sale of any such product, when respondent knows or should know that such allowance, payment, service, or facility is not affirmatively offered or otherwise made available by such supplier, including any consignor or vendor, on proportionally equal terms to all of its customers competing with respondent, including any customer who purchases from an intermediary and competes with respondent in the resale of any such product of any such supplier.

II

It is further ordered, That respondent shall not organize, direct, or sponsor any trade show unless respondent bears the full cost of the operating expense of any such trade show.

III

It is further ordered, That, for a period of five (5) years from the date of service upon it of this order, respondent shall establish and maintain at its General Office in Framingham, Massachusetts, a separate file containing each offered promotional allowance, payment, or other thing of value, induced and received within the meaning of Paragraph I of this order. The file shall be maintained alphabetically, according to suppliers with all offers and related materials pertaining to each supplier filed chronologically, within that supplier's portion of the file. The information shall be maintained for the effective period of this order. The file shall be made available to employees of the Federal Trade Commission, for inspection and copying, upon written notice of ten (10) calendar days.

IV

It is further ordered, That respondent, within thirty (30) days after the date of service upon it of this order, shall distribute a copy of this order to each of its officers and managers of each of its divisions and subsidiaries.

V

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

VI

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

THE AMERICAN SOCIETY OF ANESTHESIOLOGISTS,
INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-2952. Complaint, Jan. 22, 1979 — Decision, Jan. 22, 1979*

This consent order, among other things, requires a Park Ridge, Ill. medical society, composed mainly of physicians who have limited their professional activities to the practice of anesthesiology, to cease including statements relating to compensation arrangements in membership documents; conditioning membership privileges on such arrangements; or engaging in any act or practice which would serve to influence the prices members charge for their services. The Society is further required to delete from its files any record of disciplinary sanctions imposed upon members for failure to adhere to past pricing policies, and advise affected parties of such deletion. Additionally, the Society would be required to revoke the charter of any component society which fails to comply with the terms of the order.

Appearances

For the Commission: *M. Elizabeth Gee* and *James E. McCarty*.

For the respondent: *Squire, Sanders & Dempsey*, Washington, D. C.

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 American Society of Anesthesiologists, 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 American Society of Anesthesiologists, Inc. ("ASA"), 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 located at 515 Busse Highway, Park Ridge, Illinois.

PAR. 2. ASA has approximately 15,000 members, which amounts to approximately 90 percent of all anesthesiologists practicing in the United States. Its members are comprised mainly of those physicians who have completed post-graduate training in, and who have limited their professional activities to, the practice of anesthesiology or are otherwise especially interested in anesthesiology. The members elect