

IN THE MATTER OF
CLINIQUE LABORATORIES, INC.

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

Docket C-3027. Complaint, July 23, 1980—Decision, July 23, 1980

This consent order requires, among other things, a New York City manufacturer and distributor of cosmetics and related products to cease establishing, fixing or maintaining resale prices for its products and compelling adherence to suggested prices through coercion or otherwise. The firm is prohibited from seeking the identity of dealers who fail to conform to established prices and taking adverse action against them. The order further bars the company from restricting the lawful use of brand names and trademarks in the advertising and sale of its products, and withholding earned cooperative advertising credits or allowances from recalcitrant dealers. Additionally, respondent is prohibited from suggesting retail prices for its products for a specified period.

Appearances

For the Commission: *Jeffrey Klurfeld* and *Karen Chandler*.

For the respondent: *Joshua F. Greenburg* and *Louis A. Shapiro*, New York City, and *Saul H. Magram*, House Counsel, New York City.

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 Clinique Laboratories, Inc., 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 as follows:

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

A. "Product"

"Product" is defined as any item of cosmetic, fragrance or soap, any accessory containing any item of cosmetic, fragrance or soap, or any related accessory, including but not limited to, any applicator or brush, which is manufactured, offered for sale or sold by respondent.

In addition to the foregoing, "product" is defined to include any item which is manufactured, offered for sale or sold by respondent for resale to consumers together with any "product" as defined hereinabove.

B. "Dealer"

"Dealer" is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

C. "Resale Price"

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established or customary resale price as well as the retail price in effect at any dealer.

PARAGRAPH 1. Respondent Clinique Laboratories, 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 767 Fifth Ave., New York, New York.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale, sale and distribution of cosmetics, fragrances, soaps and related accessories.

PAR. 3. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. Respondent sells and distributes its products directly to retail dealers located throughout the United States who resell respondent's products to the general public.

PAR. 5. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale, sale or distribution of merchandise of the same general kind and nature as merchandise manufactured, advertised, offered for sale, sold or distributed by respondent.

PAR. 6. In the course and conduct of its business as above described, respondent has for some time last past effectuated and pursued a policy throughout the United States to fix, control, establish, manipulate and maintain the resale prices at which certain of its dealers advertise, offer for sale and sell its products.

PAR. 7. By various means and methods, respondent has effectuated

and enforced the aforesaid practice and policy by which it can and does fix, control, establish, manipulate and maintain the resale prices at which its products are advertised, offered for sale and sold by certain of its dealers.

PAR. 8. By means of the aforesaid acts and practices and more, respondent, in combination, agreement, understanding and conspiracy with certain of its dealers and with the acquiescence of certain other dealers, has established, maintained and pursued a planned course of action to fix and maintain certain specified uniform prices at which products will be resold.

PAR. 9. The aforesaid acts and practices of respondent have been and are now having the effect of hampering and restraining competition in the resale and distribution of respondent's 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. The acts and practices of respondent as herein alleged, are continuing and will continue in the absence of the relief herein requested.

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 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, 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 Clinique Laboratories, 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 767 Fifth Ave., 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:

A. "Product"

"Product" is defined as any item of cosmetic, fragrance or soap, any accessory containing any item of cosmetic, fragrance or soap, or any related accessory, including but not limited to any applicator or brush, which is manufactured, offered for sale or sold by respondent.

In addition to the foregoing, "product" is defined to include any item which is manufactured, offered for sale or sold by respondent for resale to consumers together with any "product" as defined hereinabove.

B. "Dealer"

"Dealer" is defined as any person, partnership, corporation or firm which sells any product in the course of its business.

C. "Resale Price"

"Resale Price" is defined as any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit used by any dealer for pricing any product. Such term includes, but is not limited to, any suggested, established or customary resale price as well as the retail price in effect at any dealer.

It is ordered, That respondent Clinique Laboratories, 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 manufacture, advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I.

1. Fixing, establishing, controlling or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.
2. Requesting, requiring or coercing, directly or indirectly, any dealer to maintain, adopt or adhere to any resale price.
3. Requesting or requiring, directly or indirectly, any dealer to report the identity of any other dealer who deviates from any resale price; or acting on any reports or information so obtained by threatening, intimidating, coercing or terminating said dealer.
4. Requesting or requiring that any dealer refrain from or discontinue selling or advertising any product at any resale price.
5. Hindering or precluding the lawful use by any dealer of any brand name, trade name or trademark of respondent in connection with the sale or advertising of any product at any resale price.
6. Conducting any surveillance program to determine whether any dealer is advertising, offering for sale or selling any product at any resale price, where such surveillance program is conducted to fix, maintain, control or enforce the resale price at which any product is sold or advertised.
7. Terminating or taking any other action to restrict, prevent or limit the sale of any product by any dealer because of the resale price at which said dealer has sold or advertised, is selling or advertising, or is suspected of selling or advertising any product.
8. Threatening to withhold or withholding earned cooperative advertising credits or allowances from any dealer, or limiting or restricting the right of any dealer to participate in any cooperative advertising program for which it would otherwise qualify, because of the resale price at which said dealer advertises or sells any product, or proposes to sell or advertise any product.
9. Making any payment or granting any other consideration or benefit to any dealer because of the resale price at which any other dealer has sold or advertised any product.

II.

1. For a period of three (3) years from June 30, 1980, orally suggesting or recommending any resale price to any dealer.
2. For a period of three (3) years from June 30, 1980, communicating in writing any resale price to any dealer.
3. After said three (3) year period, respondent shall not suggest or recommend to any dealer any resale price on any list or order form, or in any catalogue or stock control book, unless it is clearly

and conspicuously stated on each page thereof where any suggested or recommended resale price appears, the following:

THE RETAIL PRICES QUOTED HEREIN ARE SUGGESTED ONLY. YOU ARE COMPLETELY FREE TO DETERMINE YOUR OWN RETAIL PRICES.

III.

1. Nothing contained in this Order shall preclude respondent from publishing or printing any resale price which is specified by any dealer for use or inclusion in any advertising, mailer or promotional material which said dealer intends to disseminate to consumers; *provided, however*, that for a period of three (3) years from June 30, 1980, in connection with each advertising, mailer or promotional material which any dealer intends to disseminate to consumers, respondent shall make a written request to said dealer to specify its resale price(s), and shall disclose therein in a clear and conspicuous manner the following:

CLINIQUE DEALERS ARE COMPLETELY FREE TO SPECIFY RETAIL PRICES OF THEIR OWN CHOOSING FOR INCLUSION IN THIS [ADVERTISING, MAILER OR PROMOTIONAL MATERIAL]. PLEASE INSERT THOSE RETAIL PRICES YOU WISH TO BE PRINTED ON THIS [ADVERTISING, MAILER OR PROMOTIONAL MATERIAL].

2. After said three (3) year period, respondent shall not suggest any resale price to any dealer for use or inclusion in any advertising, mailer or promotional material which said dealer intends to disseminate to consumers, unless respondent, in connection with each advertising, mailer or promotional material, makes a written request to said dealer to review said advertising, mailer or promotional material for its resale price(s), and discloses therein in a clear and conspicuous manner the following:

CLINIQUE DEALERS ARE COMPLETELY FREE TO SPECIFY RETAIL PRICES OF THEIR OWN CHOOSING FOR INCLUSION IN THIS [ADVERTISING, MAILER OR PROMOTIONAL MATERIAL]. YOU MAY CHANGE THE PRICES WE HAVE SUGGESTED.

IV.

It is further ordered, That respondent shall:

1. Within sixty (60) days after service of this Order, mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to each of its present accounts. An affidavit shall be sworn to by an official of respondent verifying that the attached Exhibit A was so mailed.

2. Mail under separate cover a copy of the enclosure set forth in the attached Exhibit A to any person, partnership, corporation or

firm that becomes a new account within three (3) years after service of this Order.

3. For a period of three (3) years from the date of service of this Order, mail semiannually under separate cover a copy of the enclosure set forth in the attached Exhibit B to each of respondent's then present accounts.

V.

It is further ordered, That respondent shall forthwith distribute a copy of this Order to all operating divisions of said corporation; and, for a period of five years from the date of service of the Order, to all personnel, agents or representatives having sales, advertising or policy responsibilities with respect to the subject matter of this Order, and that respondent secure from each such person a signed statement acknowledging receipt of said Order.

VI.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the 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 respective corporation which may affect compliance obligations arising out of the Order.

VII.

It is further ordered, That respondent shall within seventy-five (75) 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.

EXHIBIT A

Dear Retailer:

This letter is being sent to all Clinique accounts. On [date], Clinique Laboratories, Inc. agreed to the entry of a Consent Order with the Federal Trade Commission concerning certain distribution practices. This Consent Order was entered into for settlement purposes only and does not constitute an admission that Clinique violated the law. As part of that Consent Order, we are obligated to send you this letter.

Clinique wants its accounts to know and understand the following:

Decision and Order

96 F.T.C.

1. You can advertise and sell Clinique products at any price you choose.
2. Clinique will not take any action against you, including termination, because of the price at which you advertise or sell Clinique products.
3. Clinique will not suggest retail prices for any product until July 1, 1983.
4. The price at which you sell or advertise Clinique products will not affect your right to lawfully use Clinique trademarks or other identification in your sale or advertising of products bearing Clinique trademarks or identification.
5. You are free to participate in any cooperative advertising program sponsored by Clinique for which you would otherwise qualify, and to receive any advertising credit or allowance allowed thereunder regardless of the price at which you advertise a Clinique product.
6. Clinique will continue to publish or print mailers, advertising and other promotional materials which you intend to disseminate to consumers containing retail prices which you specify. Until July 1, 1983, in connection with each advertising, mailer or promotional material we will publish for you to disseminate to consumers, we will be requesting in writing that you specify the retail prices you wish to be printed on these materials.

After July 1, 1983, we will send you materials for your review which may contain our suggested retail prices. You are completely free, however, to change these prices, and we will then print the materials with the retail prices which you have specified.

7. The price at which a store sells or advertises a Clinique product is its own business. Clinique does not want to be informed by an account of the price at which any other store sells or advertises any Clinique product.

If you have any questions regarding the Consent Order or this letter, please call

for Clinique Laboratories, Inc.

EXHIBIT B

Dear Retailer:

We wish to remind you of the following:

1. You can advertise and sell Clinique products at any price you choose.
2. Clinique will not take any action against you, including termination, because of the price at which you advertise or sell Clinique products.
3. Clinique will not suggest retail prices for any product until July 1, 1983.
4. The price at which you sell or advertise Clinique products will not affect your right to lawfully use Clinique trademarks or other identification in your sale or advertising of products bearing Clinique trademarks or identification.
5. You are free to participate in any cooperative advertising program sponsored by Clinique for which you would otherwise qualify, and to receive any advertising credit or allowance allowed thereunder regardless of the price at which you advertise a Clinique product.
6. Clinique will continue to publish or print mailers, advertising and other promotional materials which you intend to disseminate to consumers containing retail prices which you specify. Until July 1, 1983, in connection with each advertising, mailer or promotional material we will publish for you to disseminate to

consumers, we will be requesting in writing that you specify the retail prices you wish to be printed on these materials.

After July 1, 1983, we will send you materials for your review which may contain our suggested retail prices. You are completely free, however, to change these prices, and we will then print the materials with the retail prices which you have specified.

7. The price at which a store sells or advertises a Clinique product is its own business. Clinique does not want to be informed by an account of the price at which any other store sells or advertises any Clinique product.

If you have any questions, please call _____.

for Clinique Laboratories, Inc.

Complaint

96 F.T.C.

IN THE MATTER OF
FRED MEYER, INC.

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

Docket C-3028. Complaint, July 23, 1980—Decision, July 23, 1980

This consent order requires, among other things, a Portland, Ore. operator of a chain of retail stores to provide each charge account customer having an outstanding credit balance with a periodic statement setting forth the amount of the credit balance; and enclose with regular monthly statements, a notice advising that credit balances are refundable upon request. Refunds of credit balances must be made upon request or automatically at the end of a six-month period. The firm is further required to refund, with interest, all unpaid credit balances existing between January 1, 1974 and the effective date of the order. The order additionally requires that the firm notify layaway customers who had not completed their purchases during the fourteen (14) months prior to entry of the order that they have the option of either completing the transaction or receiving a refund of the layaway account credit balance; refund credit balances to any customer who indicates, in response to a notice, that the purchase was not completed and the customer received no reimbursement or credit on other merchandise; and maintain specified records for at least three years.

Appearances

For the Commission: *Dennis D. McFeely, Ivan L. Orton, and James M. Cox.*

For the respondent: *Robert Ridgley, Davies, Biggs, Strayer, Stoel & Bollie, Portland, Oreg.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Fred Meyer, Inc., a corporation, has violated the provisions of the Federal Trade Commission 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 as follows:

PARAGRAPH 1. Respondent Fred Meyer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 3800 S.E. 22nd, Portland, Oregon.

All allegations herein made in the present tense include the past tense.

PAR. 2. Respondent Fred Meyer, Inc. operates a chain of retail