

## IN THE MATTER OF

## LITTON INDUSTRIES, INC., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9123. Final Order, Jan. 5, 1981—Modifying Order, Sept. 10, 1982*

The Federal Trade Commission, in accordance with the decision and judgment of the Ninth Circuit Court of Appeals, has deleted references to "test" data from its order issued on January 5, 1981 (97 F.T.C. 1). Among other things, the modified order prohibits respondent from misrepresenting survey results in its advertising of microwave ovens and other consumer products.

## MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Ninth Circuit a petition for review of the Commission's order issued herein on January 5, 1981; and the Court having on May 3, 1982, rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the time for filing a petition for certiorari having expired and no petition having been filed:

*Now, therefore, it is hereby ordered,* That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read:

## ORDER

## I

*It is ordered,* That respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Representing, directly or by implication, that any commercial microwave oven or consumer microwave oven
  - (a) is able to perform in any respect, or has any characteristic, feature, attribute, or benefit; or
  - (b) is superior in any respect to any or all competing products; or

(c) is recommended, used, chosen, or otherwise preferred in any respect more often than any or all competing products,

unless and only to the extent that respondents possess and rely upon a reasonable basis for such representation at the time of its initial and each subsequent dissemination. Such reasonable basis shall consist of competent and reliable surveys and/or other competent and reliable evidence which substantiates the representation. A competent and reliable survey means one in which persons qualified to do so conduct the survey and evaluate its results in an objective manner, using procedures that insure accurate and reliable results.

2. Failing to maintain accurate records

(a) of all materials that were relied upon in disseminating any representation covered by paragraph I(1) of this order, insofar as the text of such representation is prepared, authorized, or approved by any person who is an officer or employee of respondents, or of any division, subdivision or subsidiary of respondents, or by any advertising agency engaged for such purposes by respondents, or by any of its divisions or subsidiaries;

(b) of all studies, surveys, or demonstrations that contradict any representation made by respondents that is covered by paragraph I(1) of this order.

Such records shall be retained by respondents for three years from the date that the representations to which they pertain are last disseminated, and may be inspected by the staff of the Commission upon reasonable notice.

## II

*It is further ordered,* That respondents Litton Industries, Inc., a corporation, Litton Systems, Inc., a corporation, and their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising for sale, sale, or distribution of microwave ovens (either for commercial or consumer use) and any other product normally sold to members of the general public for their personal or household use in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do cease and desist from:

1. Misrepresenting in any manner, directly or by implication, the purpose, sample, content, reliability, results or conclusions of any survey.

2. Advertising the results of a survey unless the respondents in such survey are a census or a representative sample of the population referred to in the advertisement, directly or by implication. A representative sample need not be a probability sample so long as when the ad is first disseminated respondents have a reasonable basis to expect the sampling method used would not produce biased results.

3. Representing, directly or by implication, that experts were surveyed, unless reasonable care was taken to insure that the survey respondents possessed sufficient expertise to qualify as respondents for the survey and to answer the survey questions. For the purposes of this order, an "expert" is an individual, group or institution held out as possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

*It is further ordered,* That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

*It is further ordered,* That the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

*It is further ordered,* That the respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 this order.

Commissioner Bailey did not participate.

Modifying Order

100 F.T.C.

IN THE MATTER OF

GODFREY COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5  
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE  
CLAYTON ACT

*Docket C-3066. Final Order, May 14, 1981—Modifying Order, Sept. 28, 1982*

This order reopens the proceeding and modifies the Commission's order issued on May 14, 1981 (97 F.T.C. 456) by modifying Paragraph I(G) of the order to relieve respondent from the obligation of divesting a specified retail grocery store.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED MAY 14, 1981

The Federal Trade Commission having considered respondent Godfrey Company's petition filed on July 8, 1982, to reopen this matter and to modify the consent order to cease and desist issued by the Commission on May 14, 1981, and having determined that reopening and modification of the order is warranted:

*It is ordered* That this matter be, and it hereby is reopened and that Paragraph I(G) of the Commission's order be and it is hereby modified to read as follows:

(G) The "disposition stores" means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G-427 (3045 S. 13th St., Milwaukee, WI.);
2. G-810 (3939 S. 76th St., Milwaukee, WI.);
3. J-1201 (1201 N. 35th St., Milwaukee, WI.); and
4. J-729 (729 S. Layton Blvd., Milwaukee, WI.).