

Complaint

102 F.T.C.

IN THE MATTER OF

AMANA REFRIGERATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9162. Complaint, Oct. 7, 1982—Decision, Sept. 30, 1983*

This consent order requires an Amana, Iowa manufacturer and seller of household appliances, among other things, to cease representing that only Amana microwave ovens passed independent laboratory testing conducted in 1980, and that Amana microwave ovens were rated "best quality" in a 1980 consumer survey. The order prohibits misrepresentations concerning the purpose, content, or conclusion of any test or survey, and requires the company to maintain accurate records which substantiate and/or contradict any claim made for products covered by this order. Further, respondent must have a reasonable basis for all future quality, safety, or comparative performance representations made for microwave ovens.

Appearances

For the Commission: *Andrew Sacks* and *Joel Winston*.

For the respondent: *Steven R. Gustafson*, in-house counsel, Amana, Iowa and *Arthur L. Herold*, *Webster, Chamberlain & Bean*, Washington, D.C.

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 Amana Refrigeration, Inc., a corporation, hereinafter 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. Respondent Amana Refrigeration, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa with its office and principal place of business located in Amana, Iowa.

PAR. 2. Respondent is now and at all times relevant to this complaint has been engaged in the manufacture and sale of microwave ovens, combination microwave and convection ovens, (hereafter "microwave ovens") and other products for personal or household use by members of the general public (hereafter "consumer products").

PAR. 3. Respondent has caused to be prepared and placed for publication and has caused the dissemination of advertising and promotional material, including, but not limited to, the advertising referred to herein, to promote the sale of Amana microwave ovens.

PAR. 4. Amana Refrigeration, Inc. operates in various States and in the District of Columbia. Respondent's manufacture, sale, and distribution of microwave ovens mentioned herein constitutes maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent at all times mentioned herein has been and now is in competition with individuals, firms and corporations engaged in the sale of microwave ovens and consumer products.

PAR. 6. In the course and conduct of its business, and for the purpose of promoting the sale and distribution of Amana microwave ovens, and other consumer products, respondent has disseminated and caused the dissemination of advertising in national magazines and newspapers distributed by mail and across state lines, and in radio broadcasts transmitted by radio stations located in various States of the United States and in the District of Columbia, having sufficient power to carry such broadcasts across state lines.

PAR. 7. Typical statements and representations in said advertisements, and promotional materials, disseminated as previously described, but not necessarily inclusive thereof, are found in advertisements attached hereto as Exhibits A, B, C, and D.*

PAR. 8. Through the use of the statements and representations referred to in Paragraph Seven, and other representations contained in advertisements not specifically set forth herein, respondent has represented, and now represents directly or by implication, the following claims:

1. An independent laboratory tested Amana microwave ovens and ovens of five other manufacturers, in four of the tests required for exemption from displaying a warning label. Only the Amana ovens passed all four tests.

2. A survey of microwave oven owners found that owners of nine other brands of microwave ovens rated Amana ovens "best quality."

PAR. 9. In truth and in fact the direct or implied representations found in Paragraph Eight are false, for the following reasons:

1. The independent laboratory tested ovens of six manufacturers in addition to Amana. Ovens of one other manufacturer—Panasonic—passed all of the tests.

2. The survey relied upon did not find that owners of nine other brands of microwave ovens rates Amana "best quality" more often

* See pages 1277-1280. Identical exhibits were used in *Foote, Cone & Belding Advertising, Inc.*, Dkt. C-3116.

than they rated their own brand "best quality". As many or more owners of all other brands for which the data were tabulated rated their own brand "best quality" as rated Amana microwave ovens "best quality". The vast majority of owners of other brands did not rate Amana "best quality" in the survey. In addition, the data Amana relied upon reported results for owners of only four other brands of microwave ovens.

PAR. 10. At the time respondent made the representations alleged in Paragraph Eight, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 11. Through the use of the advertisements referred to in Paragraph Seven, and other advertisements not specifically set forth herein, respondent has represented, directly or by implication, that it possessed and relied upon a reasonable basis for the representations set forth in Paragraph Eight at the time of the initial dissemination of the representations and each subsequent dissemination. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore, respondent's making and dissemination of said representations, as alleged, constituted and now constitute unfair and deceptive acts or practices.

PAR. 12. As the representations referred to above are false, such representations are deceptive, misleading, and unfair.

PAR. 13. The use by respondent of the aforesaid false, unfair, or deceptive statements, representations, acts, and practices, and the placement in the hands of others of the means and instrumentalities by and through which others may have used the aforesaid statements, representations, acts, and practices, have had the capacity and tendency both to mislead consumers into the erroneous and mistaken belief that said statements and representations are true and complete and to induce such persons to purchase Amana microwave ovens by reason of said erroneous and mistaken belief.

PAR. 14. The aforesaid acts or practices of respondent, herein alleged as aforesaid, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted and now constitute unfair or deceptive acts and practices affecting commerce and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respond-

ent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Amana Refrigeration, Inc. 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 in the City of Amana, State of Iowa.

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 respondent Amana Refrigeration, Inc. ("Amana"), 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 advertising, offering for sale, sale, or distribution of any Amana microwave oven for consumer use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- A. Representing, directly or by implication, contrary to fact, that only Amana ovens passed independent testing conducted by an independent laboratory in 1980.

- B. Representing, directly or by implication, contrary to fact, that in

a consumer survey owners of nine other microwave ovens rated Amana "best quality" more often than they rated any other brand best quality, including the owners' own brand.

II

It is further ordered, That respondent, 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 advertising, offering for sale, sale, or distribution of any 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 forthwith cease and desist from:

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

B. Failing to maintain accurate records:

1. Of all materials that were relied upon by respondent in disseminating any representation covered by this order.

2. Of all test reports, studies, surveys, or demonstrations in its possession or control that contradict any representation made by respondent that is covered by this order.

Such records shall be retained by respondent 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.

III

A. *It is further ordered,* That respondent, 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 advertising, offering for sale, sale, or distribution of any microwave oven, or combination microwave and convection oven, for consumer use 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, the quality and/or safety of any such product or from comparing any such product as to quality and/or safety to any product or products of one or more competitors, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for such representation,

consisting of reliable and competent evidence that substantiates such representation.

Provided, however, That nothing in this Part shall prohibit respondent from making any non-deceptive representation concerning the microwave oven warning label exemption program operated pursuant to 21 C.F.R. 1030.10(C)(6)(i) and administered by the Office of Radiological Health.

B. To the extent the evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" for purposes of Part III (A) only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

IV

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in 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 forthwith distribute a copy of this order to each of its operating divisions and to all authorized Amana distributors.

VI

It is further ordered, That respondent shall, within sixty (60) days after this order becomes final, 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 READER'S DIGEST ASSOCIATION, INC.

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

Docket C-2075. Consent Order, Nov. 2, 1971—Modifying Order, Sept. 30, 1983

This order reopens the proceeding and modifies the Commission's order issued against The Reader's Digest Association, Inc. on Nov. 2, 1971 (79 F.T.C. 696), *modified* March 12, 1974 (82 F.T.C. 1356). The modified order deletes the prohibition on use of the word "lucky" in contest promotions; allows truthful special selection claims; reinstates a conditional odds disclosure requirement to apprise consumers of their likelihood of winning; limits the recordkeeping requirement of Paragraph I.A. (7)-(9) to 3 years; and permits respondent to disclose the terms and conditions of a sales offer in its catalog instead of on order forms or return reply coupons. Further, respondent is no longer required to disclose the value of all free promotional items, but rather is prohibited from misrepresenting these items' value.

ORDER REOPENING THE PROCEEDING AND MODIFYING
CEASE AND DESIST ORDER

On March 3, 1983, the Reader's Digest Association, Inc., (Reader's Digest) requested that the Commission reopen and modify its November 2, 1971, order to cease and desist (79 F.T.C. 696), as modified on March 12, 1974 (82 F.T.C. 1356). In a letter dated June 21, 1983, Reader's Digest amended its request to ask for specific modifications it negotiated with the staff. For the reasons discussed below, the Commission reopens the proceeding and modifies the order.

The Commission's 1971 order arose from an investigation of practices Reader's Digest used in connection with its sweepstakes promotions. Respondent has used such contests to promote its magazine and book sales. The Commission's complaint alleged that Reader's Digest engaged in unfair and deceptive acts or practices, by, *inter alia*, failing to award all advertised prizes, misrepresenting contestants' chances of winning, and mailing simulated items of value. The consent order prohibited these practices, and required Reader's Digest to disclose the odds of winning all advertised prizes. In 1974, however, following the Commission's dismissal of a complaint against D.L. Blair Corp. (82 F.T.C. 252) for allegedly deceptive sweepstakes practices, the Commission deleted the odds disclosure requirement from the Reader's Digest order.

In 1975, the Commission brought a civil penalty action alleging that Reader's Digest mailed simulated checks and bonds in violation of the order. The district court, after granting summary judgment on liabili-