

IN THE MATTER OF
DILLON COMPANIES, INC.

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

Docket C-3119. Complaint, Oct. 13, 1983—Decision, Oct. 13, 1983

This consent order requires a Hutchinson, Kansas operator of retail grocery stores, among other things, to cease engaging in any concerted action to impede the collection or dissemination of comparative price information. For a period of 5 years, the company is prohibited from requiring price checkers to purchase items to be priced, as a condition of allowing them to price check; denying price checkers the same access to its stores as is provided to customers; or coercing any price checker, publisher or broadcaster to refrain from collecting or reporting comparative price information. Additionally, respondent must offer to reimburse TeleCable up to \$1,000 for the broadcast of a comparative grocery price information program. Should the station elect to broadcast such a program, respondent must post signs and place newspaper ads notifying the public that such a program is being broadcast.

Appearances

For the Commission: *Patricia A. Bremer.*

For the respondent: *Norman Diamond, Arnold & Porter, 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 Dillon Companies, Inc., has violated 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 this complaint charging as follows:

1. Dillon Companies, Inc., (hereafter "respondent") is a Kansas corporation with its principal offices at 700 E. 30th Avenue, Hutchinson, Kansas.
2. At all times relevant to this complaint, respondent has been engaged in the operation of retail grocery stores in various areas in the United States including the city of Springfield, Missouri, and Greene or Christian counties, Missouri (hereafter "Springfield").
3. At all times relevant to this complaint, respondent has engaged

in activities in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Except to the extent that competition has been restrained as herein alleged, in the course and conduct of its business respondent has been and is now in substantial competition in or affecting commerce with corporations, firms, or individuals engaged in the operation of retail grocery stores in Springfield.

5. Vector Enterprises, Inc., ("Vector") is engaged in the business of gathering and selling comparative retail grocery price information in various cities throughout the United States. In each city, Vector visits grocery stores weekly and collects price information on a sample of 80 or more grocery products in four categories: meat, produce, grocery and non-food. This activity is sometimes referred to as "price checking." Vector processes the price data and sells it to cable television stations, which typically broadcast the comparative prices of the stores on each of the items checked as well as weighted market basket comparisons on each of the four grocery categories and the total of all categories.

6. On or about July 15, 1980, Vector began collecting comparative price information on a weekly basis at about five retail grocery stores, including the largest chains, in Springfield, and Vector began selling this comparative retail grocery price information to TeleCable, a cable television station in Springfield. TeleCable broadcast Vector's information 24 hours a day. For more than one year, Vector collected and TeleCable broadcast comparative price information for a number of retail grocery stores in Springfield, including one or more stores operated by respondent.

7. Prior to October 14, 1981, the Vector price check compared the prices of five Springfield grocers including respondent. Some time shortly before October 14, 1981, respondent and other operators of retail grocery stores in Springfield whose prices were also included in the Vector survey agreed that they would act in concert to impede Vector's ability to gather comparative grocery prices. On or about that date, pursuant to the agreement, respondent and other operators of retail grocery stores in Springfield simultaneously took concerted action that effectively prevented Vector from collecting comparative grocery price information in their stores. Respondent refused to permit Vector to collect price information in its stores. The other stores either did likewise or they required Vector to purchase each grocery item it desired to price check. The weekly cost of purchasing the groceries would have been substantially higher than the price at which Vector had agreed to sell the grocery price information to TeleCable.

8. As of October 14, 1981, as a direct result of the agreement among

respondent and its competitors, Vector was able to price check at only one of the five Springfield grocery retailers that had been included in the survey. Thereafter TeleCable broadcast the prices for just that one store. On or about December 31, 1981, TeleCable stopped broadcasting Vector's price reporting program and terminated its agreement with Vector because Vector was no longer able to provide comparative price information for the largest retail grocery chains in Springfield.

9. Through the acts and practices described above, respondent and others have agreed, combined or conspired to obstruct the collection and dissemination of comparative grocery price information, with the following actual or potential effects, among others:

a. Price competition among Springfield grocery retailers has been restrained;

b. Consumers in Springfield have been deprived of retail grocery price information that can be used in the selection of a grocery store;

c. Competition in the collection and dissemination of retail grocery price information has been hindered and restrained;

d. Competition in the development of new forms of retail grocery price information has been hindered and restrained; and

e. The free forces of competition have been prevented from determining the amount of comparative retail grocery price information that will be available to consumers in the marketplace.

10. Respondent and others have agreed, combined or conspired to engage, and they have actually engaged, in conduct that constitutes a restraint on price competition. Respondent thereby has unreasonably restrained trade in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended; and respondent's conduct as alleged herein constitutes an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended.

11. Respondent and others have agreed, combined or conspired to boycott, and they have actually boycotted, firms that collect or disseminate comparative grocery price information. Respondent thereby has unreasonably restrained trade in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act, as amended; and respondent's conduct as alleged herein constitutes an unfair method of competition or an unfair act or practice in violation of Section 5(a)(1) 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 Bureau of Competition 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 Dillon Companies, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 700 E. 30th Avenue, in the City of Hutchinson, State of Kansas.
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.

For the purpose of this Order, the following definitions shall apply:

A. *Dillon* means Dillon Companies, Inc., its retail grocery divisions and subsidiaries, its officers, representatives, agents, employees, successors and assigns.

B. *Price check* or *price checking* means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. *Price checker* means any person engaged in price checking.

D. *Price reporting or price report* means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. *Springfield* means the counties of Christian and Greene, Missouri.

F. *Customer* means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. *Person* means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. *Geographic area* means: (1) a Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. *Supermarket* means any retail grocery store (SIC 5411) with annual sales of more than one million dollars (\$1,000,000.00).

J. *Springfield Division* means (i) Washington County, Arkansas; Crawford County, Kansas; Mayes and Ottawa Counties, Oklahoma; and Boone, Callaway, Camden, Cass, Cole, Greene, Henry, Jasper, Miller, Moniteau and Morgan Counties, Missouri; and (ii) any other geographic area in which the Dillon retail division based in Greene County, Missouri, operated a supermarket on or after October 14, 1981.

II.

It is further ordered, That:

A. Dillon shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraph II.C., for five (5) years following the date on which this Order becomes final, Dillon shall cease and desist from taking or threatening to take any unilateral action in its Springfield Division that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Dillon's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Dillon from adopting

reasonable, non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Dillon's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Dillon from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Dillon believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Dillon believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Dillon's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Dillon may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Dillon's statement shall exist. In any civil penalty action against Dillon for a violation of subparagraph II.B. 2. occurring after notice to the Federal Trade Commission was given by Dillon as provided in this subparagraph, Dillon shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagraph have been met. In meeting its burden, Dillon may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

III.

It is further ordered, That, upon the resumption of price reporting by TeleCable of Springfield similar in quality and coverage to that broadcast by it prior to October 14, 1981, and upon receipt by Dillon of written request for payment from TeleCable, Dillon shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars (\$250.00) per week. Dillon's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars (\$1,000.00) or three (3) years following the date on which

this Order becomes final, whichever occurs first. Dillon shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV.

It is further ordered, That, within seven (7) days following the date on which this Order becomes final, Dillon shall send a letter, which has been approved in advance by the Federal Trade Commission, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Dillon's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Dillon must receive from TeleCable before certain Order provisions become binding upon Dillon.

V.

It is further ordered, That, if at any time during the two years following the date on which this Order becomes final, the President of the Dillon Springfield Division is notified in writing by TeleCable of Springfield that price reporting that includes any of Dillon's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Dillon shall post signs no smaller than 30 inches by 40 inches in a front window in each of Dillon's supermarkets in Springfield, stating:

GROCERY PRICE SURVEY

A price survey comparing prices of selected grocery items at Dillon's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel _____ and is broadcast from _____ to _____.

B. For a period of sixty (60) days following the receipt of such notice, whenever Dillon places food advertisements in the *Springfield Daily News* of one-half page or larger, Dillon shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Dillon does not place a one-half page or larger food advertisement in the *Springfield Daily News*, Dillon shall place this announcement as a display advertisement in the Lifestyle/Food Section of the *Springfield Daily News*.

VI.

It is further ordered, That Dillon shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three years, provide a copy of this Order to each of its officers and supermarket managers, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII.

It is further ordered, That Dillon shall, within sixty (60) days after the date on which this Order becomes final, file with the Commission a verified written report, setting forth in detail the manner and form in which Dillon has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

VIII.

It is further ordered, That Dillon shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in it such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation or its retail grocery operations, which may affect compliance obligations arising out of this Order.

IN THE MATTER OF
GREAT DANE TRAILERS, INC.

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

Docket C-3120. Complaint, Oct. 13, 1983—Decision, Oct. 13, 1983

This consent order prohibits the manufacturer and seller of Great Dane truck trailers, among other things, from taking any action which frustrates or eliminates competition in the sale of new Great Dane truck trailers. Great Dane Trailers, Inc. is barred from entering into any agreement with the Great Dane Distributor Council, a dealer's association, or its members, to restrict sales to certain territories or customers; and from formulating or utilizing exclusive territories until Dec. 1, 1984. The manufacturer must make available to dealers and customers a brochure listing all independent dealers and advise customers that any dealer may be contacted regarding the purchase of a new Great Dane truck trailer.

Appearances

For the Commission: *Douglas B. Brown and Phylliss W. Richardson.*

For the respondent: *John M. Hewson, III, Hunter, Maclean, Exley & Dunne, Savannah, Ga. and Barry J. Brett, Parker, Chapin, Flattau & Klimpe, 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 Great Dane Trailers, Inc., a corporation, and Great Dane Distributor Council, an unincorporated association, and its members, hereinafter sometimes referred to as respondents, have 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:

I. DEFINITIONS

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

A. *Truck trailer* is a property-carrying vehicle, or chassis thereof, drawn by a truck or truck tractor and having one or more axles with a rating of 10,000 pounds or more per axle.