

IN THE MATTER OF
THE GILLETTE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF THE CLAYTON ACT

Docket 9152. Complaint, Feb. 19, 1981—Decision, Oct. 31, 1983

This consent order requires a leading manufacturer of razor blades, razors, toiletries and grooming aids, among other things, to make alternative advertising allowances available to customers that compete in the resale of Gillette products but do not regularly advertise in newspapers. The order requires the company to notify all its customers, as specified, of its advertising and promotional programs, and of the availability of usable and economically feasible alternatives. Such alternatives shall consist of handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters and other in-store promotional activities acceptable to the company. Further, respondent must distribute a special written notice informing customers of the change in its promotional programs and provide sales personnel with a copy of the order.

Appearances

For the Commission: *Karen G. Bokor.*

For the respondent: *Stephen M. Axinn*, Boston, Mass. and *David Cavers, Jr., Palmer & Dodge*, Boston, Mass.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et. seq.*) and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

PARAGRAPH 1. Respondent, The Gillette Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Prudential Tower Building, Boston, Massachusetts.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, sale and distribution of razor blades, razors, toiletries and grooming aids.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined

in the Clayton Act and Federal Trade Commission Act, having sold and shipped its products or caused them to be transported from its principal place of business in Massachusetts to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of credits or sums of money, hereinafter referred to as promotional allowances, either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services or facilities, including advertising in various media such as newspapers, furnished by customers in connection with the offering for sale or sale of respondent's products.

PAR. 5. Respondent's promotional allowances discriminated against particular customers or classes of customers in that they were not available, in a practical business sense, on proportionally equal terms to all customers competing in the sale and distribution of respondent's products. Respondent failed to offer alternative terms and conditions to customers for whom respondent's basic promotional allowance plan is not usable and suitable.

PAR. 6. The acts and practices of respondent set forth in Paragraphs 4 and 5 above violate Section 5 of the Federal Trade Commission Act, as amended, and Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein contemplated.

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 Subsection (d) of Section 2 of the Clayton Act, as amended, and the respondent 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 The Gillette Company 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 Prudential Tower Building, in the City of Boston, Commonwealth of 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.

A. *It is ordered*, That respondent, The Gillette Company, a corporation, its successors and assigns, and its officers, directors, agents, representatives and employees, directly or indirectly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of razor blades, razors, toiletries or cosmetic grooming aids sold or offered for sale by respondent (hereinafter referred to as "Respondent's Covered Products") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, or the Clayton Act, as amended, shall cease and desist from paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for newspaper advertising or promotional services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of any of Respondent's Covered Products unless:

(1) respondent makes such compensation or consideration available on proportionally equal terms for alternative services or facilities that are usable and economically feasible for all customers who compete in the distribution or resale of Respondent's Covered Products and who do not regularly advertise in newspapers or for whom any newspaper advertising or promotional program or plan subject to Paragraph IA of this Order is not usable or economically feasible,

which services or facilities shall consist of: handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters; store banners or shelf talkers; or other in-store promotional activities acceptable to respondent; and

(2) respondent (i) imprints on the smallest shipping container used for Respondent's Covered Products the legend "Advertising, promotional, and display allowances are periodically made available by Gillette to all retailers. To obtain information about these promotional opportunities contact your supplier or write to: The Gillette Company [Safety Razor Division, Sales Promotion Department - P.O. Box 2131, Boston, Massachusetts 02106], [Personal Care Division, Sales Promotion Department, 101 Huntington Avenue, Boston, Massachusetts 02199]"; and (ii) for each promotion causes copies of "deal sheets" or similar materials explaining the availability of alternative methods of participation in respondent's advertising or promotional program or plan to be supplied to its wholesalers or distributors in sufficient quantity for presentation or delivery by such wholesalers or distributors to each customer of such wholesaler or distributor.

B. *Provided, however,* That nothing herein contained shall be construed or interpreted to abridge or otherwise restrict respondent's entitlement to avail itself of the "Meeting Competition Defense," the provisions of which are contained in Section 2(b) of The Clayton Act, 15 U.S.C. 2(b), as amended.

II.

It is further ordered, That respondent shall within the twelve (12) month period beginning thirty (30) days after service upon it of this Order (hereinafter referred to as the "Effective Period") notify those retailers who purchase Respondent's Covered Products of the availability of alternative methods of participation in respondent's allowance programs by distributing a written notice in the form attached hereto as Exhibit A in the following manner:

(1) Such notice shall be contained in the "deal sheets" respondent delivers to its wholesalers, for presentation or delivery by such wholesalers to each customer of such wholesalers, in connection with five (5) major product promotions offered by respondent during the Effective Period; and

(2) Such notice shall be contained in a printed insert which will be included in each presealed "Counter Display" and "Floor Stand" distributed by respondent in connection with respondent's "World Series" promotion occurring within the Effective Period.

For purposes of paragraph II (1) of this Order, respondent shall give

the notice contemplated therein in connection with respondent's "Super Bowl," "Valentine's Day," "All Star," "Miss America" and "World Series" product promotions if such product promotions are offered during the Effective Period. In the event that any of these product promotions are not offered during the Effective Period, respondent shall give the notice contemplated by paragraph II (1) in connection with a product promotion that is comparable to the one no longer offered.

III.

It is further ordered, That respondent shall deliver a copy of this Order to cease and desist to all sales and sales management personnel employed on the date of service of this order in each of respondent's operating divisions that is engaged in the sale of Respondent's Covered Products within the United States.

IV.

It is further ordered, That (i) within sixty (60) days after service upon respondent of this Order and (ii) within ninety (90) days after the end of the Effective Period, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied and is complying with this Order.

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 which may affect compliance obligations arising out of this Order.

EXHIBIT A

Performance Alternatives: For accounts that do not regularly advertise in newspapers or for whom any other promotional program offered by The Gillette Company is not usable or economically feasible, The Gillette Company offers compensation for the following performance alternatives: handbills and circulars in amounts not less than 1,000; off-shelf, end-of-aisle or dump displays; window or wall posters; store banners or shelf talkers; or other in-store promotional activities acceptable to The Gillette Company.

IN THE MATTER OF

LOMAS & NETTLETON FINANCIAL CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3125. Complaint, Nov. 1, 1983—Decision, Nov. 1, 1983*

This consent order requires a Dallas, Texas mortgage banker, among other things, to establish and maintain procedures to ensure that it will timely pay all obligations due and payable from homeowners' escrow accounts. The company must maintain procedures to identify and correct any injury caused by its failure to pay obligations from a homeowner's escrow account when due. The company is prohibited from misrepresenting that funds have been withdrawn from escrow and the nature of any fee or obligation imposed upon a homeowner's escrow account.

Appearances

For the Commission: *David R. Flowerree.*

For the respondent: *John C. Fricano, Skadden, Arps, Slate, Meagher & Flom, 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 Lomas & Nettleton Financial Corporation, a corporation, and The Lomas & Nettleton Company, a corporation, 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 in that respect as follows:

Parties

PARAGRAPH 1. Respondent Lomas & Nettleton Financial Corporation, hereinafter "LNFC," 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 2001 Bryan Tower, Dallas, Texas.

Respondent The Lomas & Nettleton Company, hereinafter "L&N," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut. Its office and principal