

IN THE MATTER OF

ROSWIL, INC.

trading and doing business as

RAMEY SUPER MARKETS

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9172. Complaint,* Dec. 16, 1983—Decision, Nov. 12, 1986*

This consent order requires a Springfield, Mo. grocer, among other things, to cease engaging in concerted action that restricts the gathering or reporting of comparative grocery price data. Additionally, respondent is prohibited from: (1) requiring price checkers to buy the surveyed items; (2) denying price checkers the same access to Roswil's stores as customers; and (3) coercing any price checker, publisher or broadcaster into discontinuing price reporting. Further, respondent is required to take several steps to increase the likelihood that price surveys will be resumed in Springfield, Missouri. According to the order, the company must reimburse the local cable television station up to \$1,000 of its costs if it decides to broadcast a comparative grocery price program and notify the public that such program will be aired.

Appearances

For the Commission: *Patricia A. Bremer.*

For the respondent: *Donald W. Jones, Hulston, Jones & Sullivan,*
Springfield, Mo.

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 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 com-

* Complaint previously published at 104 F.T.C. 526 (1984).

plaint, 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and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, and having duly considered the comment filed thereafter by an interested person pursuant to § 3.25 of its Rules, now in further conformity with the procedure prescribed in § 3.25 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Roswil, Inc., is a Missouri corporation, trading and doing business as Ramey Super Markets. Its registered agent is Flavius Freeman, 1-130 Corporate Square, Springfield, Missouri.

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. *Roswil* means Roswil, Inc., its divisions and subsidiaries, officers, directors, 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).

II.

It is ordered, That:

A. Roswil 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 Paragraphs II.C. and II.D., until September 7, 1989, Roswil shall cease and desist from taking or threatening to take any unilateral action 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 Roswil'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 Roswil 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 Roswil's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Roswil 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 Roswil 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 Roswil 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 Roswil'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, Roswil 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 Roswil's statement shall exist. In any civil penalty action against Roswil for a violation of subparagraph II.B.2. occurring after notice to the Federal Trade Commission was given by Roswil as provided in this subparagraph, Roswil 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, Roswil 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.

D. 1. Nothing in Paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting in its stores information that is not available to customers.

2. Nothing in Paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting information in its stores, if said company is presently or has been under contract to Roswil to pay such a fee for collecting such information, or if the primary purpose of collection such information is not to disseminate it to the public.

III.

It is further ordered, That, upon the resumption of price reporting by TeleCable of Springfield that is similar in quality and coverage to that broadcast by it prior to October 14, 1981, and that includes any Roswil supermarket, and upon receipt by Roswil of written request for payment from TeleCable, Roswil 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. Roswil'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. Roswil 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, Roswil shall send a letter, a copy of which is attached here as Exhibit A, together with a copy of this order, to TeleCable of Springfield, informing TeleCable of Roswil's obligations under Parts II and V of this order, TeleCable's rights

under Part III, and the notices that Roswil must receive from TeleCable before certain order provisions become binding upon Roswil.

V.

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

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

GROCERY PRICE SURVEY

A price survey comparing prices of selected grocery items at Ramey'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 Roswil places food advertisements of one-half page or larger in any printed advertising medium with circulation of 15,000 or more copies in Springfield, Roswil 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 Roswil does not place a one-half page or larger food advertisement in such printed advertising medium, Roswil shall place this announcement as a display advertisement in any printed advertising medium with circulation of 15,000 or more copies in Springfield.

VI.

It is further ordered, That Roswil 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 actively engaged in the operation of its supermarkets in Springfield and to each manager of a Ramey supermarket located in Springfield, and secure from each such individual a signed statement acknowledging receipt of this order.

VII.

It is further ordered, That Roswil 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 Roswil 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 Roswil 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.

EXHIBIT A

TeleCable of Springfield
1533 South Enterprise
Springfield, Missouri 65801

Dear Sir or Madam:

This is to notify you that Roswil, Inc. ("Roswil"), which operates Ramey Super Markets in Springfield, Missouri, has entered into a consent order with the Federal Trade Commission in which it has agreed that it will not interfere with efforts by independent parties such as TeleCable of Springfield to engage in price reporting or price checking in Roswil's grocery stores in Springfield. Roswil has agreed that it will not require price checkers to purchase the items being price checked, will not deny price checkers the same access to its supermarkets as is provided to customers, and will not attempt to coerce any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting. The terms of and limitations on Roswil's agreement are set forth in a consent order issued by the Federal Trade Commission, a copy of which is enclosed herewith.

If TeleCable of Springfield institutes a price reporting program similar or superior in quality and coverage to the one broadcast by TeleCable in 1981, and if the program includes any of Roswil's grocery stores in Springfield, Missouri, Roswil will reimburse TeleCable for its actual costs of obtaining price reports, up to the amount of \$250 per week, and up to \$1,000 in total. Roswil will also place notices in its Springfield grocery stores and in its weekly advertisements, informing consumers of TeleCable's price surveys. The precise terms of Roswil's obligations to place such notices, and to reimburse TeleCable for certain of its costs, are set forth in the enclosed consent order.

In order to receive any funds to which you may be entitled and to effect the placement of the notices described above, please notify Roswil in writing, c/o President, Ramey

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Super Markets, 3259 East Sunshine, Springfield, Missouri 65804, stating when the program began or is scheduled to begin, the time and channel on which the survey will be broadcast, and TeleCable's costs, if any, of obtaining the survey information.

Very truly yours,

President
Ramey Super Markets

Enclosure

IN THE MATTER OF

GENERAL RAILWAY SIGNAL CO., ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. (2) OF THE CLAYTON ACT*Docket C-837. Consent Order, Sept. 24, 1964—Modifying Order, Nov. 13, 1986*

The Federal Trade Commission has modified a 1964 consent order (66 F.T.C. 882) by permitting American Standard Corp., a successor to original respondent Westinghouse Air Brake, to engage in activities necessary to participate in lawful joint ventures. The FTC found that respondent "has adequately demonstrated that evolving technological and economic factors in the railroad signaling equipment and systems industry have created a competitive need for American Standard to participate in joint ventures . . .".

ORDER MODIFYING CONSENT ORDER

ISSUED SEPTEMBER 24, 1964

On April 8, 1986, American Standard Inc. ("American Standard"), successor to respondent Westinghouse Air Brake Co. ("WABCO"), filed a "Request To Reopen Proceeding and Terminate Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asks the Commission to reopen the proceeding and vacate the consent order issued September 24, 1964, ("order") in its entirety. In the alternative, the Request asks the Commission to modify the order "to permit conduct that is otherwise permissible under the antitrust laws, including conduct that is reasonably ancillary to the formation or operation of lawful joint ventures, exempt from application of the antitrust laws, or beyond the subject matter jurisdiction of the FTC."

After reviewing the Request and other relevant information, the Commission has concluded that it is in the public interest to modify the order to permit American Standard to engage in conduct that is ancillary to and reasonably necessary for the formation or operation of any joint venture that is lawful under the antitrust laws. American Standard has adequately demonstrated that evolving technological and economic factors in the railroad signaling equipment and systems industry have created a competitive need for American Standard to participate in joint ventures to research, develop and produce integrated railroad systems and to bid for "turnkey" railroad projects. The order's present language, designed to restrain conduct that might facilitate collusive agreements, could be interpreted to prohibit other-