

Complaint

67 F.T.C.

IN THE MATTER OF
WEST COAST CLAIM ADJUSTERS ET AL.

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

Docket C-901. Complaint, June 1, 1965—Decision, June 1, 1965

Consent order requiring a Los Angeles, Calif., corporation engaged in the business of purchasing waterless cookware, tools, radios, jewelry, watches, and other merchandise from manufacturers and suppliers and selling such merchandise at retail for their own account, to cease using the term "Claim Adjuster" as part of their corporate name, thereby misrepresenting that they are liquidators or authorized adjusters engaged in the sale of distress merchandise for the purpose of settling claims, and falsely representing the guarantee on certain watches.

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 West Coast Claim Adjusters, a corporation, and Alan Graham, Sam Stone and Ruth Graham, individually and as officers of said corporation, hereinafter 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:

PARAGRAPH 1. Respondent, West Coast Claim Adjusters, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 5176 Santa Monica Boulevard in the city of Los Angeles, State of California.

Respondents Alan Graham, Sam Stone and Ruth Graham are officers of said corporation. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporation.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, sale and distribution of waterless cookware, tools, radios, jewelry, watches, and other articles of merchandise to members of the purchasing public.

PAR. 3. In the course and conduct of their business respondents now cause and for some time last past have caused, their products, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of

the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the conduct of their business and at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals engaged in the sale of waterless cookware, tools, watches, radios, and other articles of merchandise of the same general kind and nature as that sold by respondents.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the purchase of their merchandise, respondents through the use of their trade name West Coast Claim Adjusters and in circulars and promotional material sent to prospective purchasers, make numerous statements respecting their trade status, the nature of their business, the source of their merchandise and the nature and extent of their guarantee.

Among and typical, but not all inclusive, of the statements and representations appearing in said advertisements are the following:

WEST COAST CLAIM ADJUSTERS

5176 Santa Monica Blvd.

Los Angeles 29, California

* * * * *

Gentlemen:

We have just been notified that our company has been selected to liquidate 380 sets of fine Winfield China * * *

* * * * *

PLEASE REFER TO ABOVE CLAIM NUMBERS WHEN ORDERING

* * * * *

GRUEN, HELBROS AND WALTHAM WATCH LIQUIDATION -W34-7

* * * * *

This entire lot of watches is being offered on a no limit--no reserve basis. All orders will be processed on the priority system, until supply is exhausted.

* * * * *

TOOL LIQUIDATION NO. SSW-45-65

PUBLIC NOTICE

You are hereby notified that the recorded lot numbers in this bulletin are now being released as a public offering.

* * * * *

West Coast Claim Adjusters (Liquidating Dept.)

* * * * *

WALTHAM * * * WATCH * * *

Complaint

67 F.T.C.

LIFETIME GUARANTEE
LIFETIME FACTORY GUARANTEE

* * * * *

PAR. 6. By and through the use of the statements and representations set forth in Paragraph Five hereof and others of similar import not specifically set forth herein, respondents represent, and have represented, directly or by implication:

1. Through the use of the name "West Coast Claim Adjusters," separately or in conjunction with the foregoing statements and representations or by said statements and representations alone that they are liquidators, authorized adjusters or agents engaged in the sale of bankrupt, estate, distrained or other distress or surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

2. That certain of the Waltham wrist watches offered for sale are unconditionally guaranteed for the lifetime of the purchaser.

PAR. 7. In truth and in fact:

1. Respondents are not liquidators, authorized adjusters or agents engaged in the sale or disposition of bankrupt, estate, distrained or other distress or surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims.

Instead, respondents are engaged in the business of purchasing the advertised merchandise from manufacturers or suppliers and selling it at retail for their own account to the purchasing public.

2. The aforesaid watches are not guaranteed for the lifetime of the purchaser, but only for the useful life of the watch and said guarantee is not unconditional but is subject to limitations and conditions which are not set forth in respondents' advertising of said guarantee.

Therefore, the statements and representations referred to in Paragraphs Five and Six hereof were and are false, misleading and deceptive.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public

and of respondents' competitors and constituted, and now constitute, unfair methods of competition, in commerce, and unfair and deceptive acts and practices, in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging certain of the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and such respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents named in the caption hereof and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent West Coast Claim Adjusters is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 5176 Santa Monica Boulevard in the city of Los Angeles, State of California.

Respondents Alan Grahm, Sam Stone and Ruth Grahm are officers of said corporation, and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered. That respondents West Coast Claim Adjusters, a corporation, and its officers, and Alan Grahm, Sam Stone and Ruth Grahm, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale,

sale or distribution of waterless cookware, tools, radios, jewelry, watches, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "claim adjusters" or any other word, or words of similar import or meaning, in or as a part of respondents' trade or corporate name, or otherwise representing, directly or by implication, that they are liquidators, authorized adjusters or agents engaged in the sale or disposition of bankrupt, estate, salvage, distrained or other distress or surplus merchandise for the purpose of liquidating, adjusting, paying off or otherwise settling indebtedness or claims; or misrepresenting, in any manner, their trade or business status or the source, character or nature of the merchandise being offered for sale.

2. Representing, directly or by implication, that any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

3. Using the word "Lifetime" or any other word or words of similar meaning which relate to any life other than that of the purchaser or original user in reference to the duration of an advertised guarantee unless the "life" referred to is clearly and conspicuously disclosed in said advertisement; or misrepresenting in any manner the duration of a guarantee.

It is further ordered, That the respondents herein 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.

IN THE MATTER OF

EMERSON RADIO ASSOCIATES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE VIOLATION OF SECTION 2(d) OF
THE CLAYTON ACT

Docket 7969. Complaint, June 23, 1960—Decision, June 2, 1965

Order vacating a consent agreement which suspended a cease and desist order against a Newark, N.J., wholesaler of Emerson brand electrical appliances and dismissing the complaint which charged the firm with discriminating between its customers in granting promotional allowances in violation of Sec. 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the named respondents have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PAR. 1. Respondent Emerson Radio Associates, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 985 Broad Street, Newark, New Jersey. Individual respondents Michael Kory and Murray Golden are now, and were during all times hereinafter stated, officers and directors of said corporate respondent, and are said corporation's principal stockholders. These individual respondents are and have been controlling and directing the operations of corporate respondent during the period from 1956 to the present. They have the same address as does corporate respondent.

PAR. 2. Respondent Emerson Radio Associates, Inc., is now, and has been, engaged in the business of selling and distributing to retail outlets for resale to the consuming public "Emerson" brand appliance products such as television and radio receiving sets, high fidelity phonographs and air conditioning units. Respondent corporation sells and distributes these appliance products to retail outlets pursuant to a "Distributor Franchise Agreement" entered into by it with Emerson Radio & Phonograph Corporation, the manufacturer of "Emerson" appliance products.

Respondent corporation's sales of appliance products exceeded \$10,000,000 in 1959.

PAR. 3. In the course and conduct of its business, respondent corporation has been engaged and is presently engaged in commerce, as "commerce" is defined in the amended Clayton Act, by selling and distributing its products in various States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent corporation paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of "Emerson" appliance products sold to them by respondent corporation. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing with said favored customers in the distribution of such products.

Order

67 F.T.C.

PAR. 5. As an example of the practices alleged herein, respondent corporation has granted certain large retail customers located in New York City substantial payments or allowances in connection with the advertising of "Emerson" brand appliance products primarily in newspapers. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with said favored customers. Among the favored customers receiving payments or allowances in 1958 which were not offered to other competing customers on proportionately equal terms in connection with the promoting and advertising of respondent corporation's appliance products were:

<i>Customer:</i>	<i>Approximate payment received</i>
Davega Stores Corporation -----	\$19,547
Korvette -----	17,593
Gimbels -----	12,925
Vim Electric Company, Inc.-----	11,806
R. H. Macy & Co.-----	6,100

PAR. 6. The acts and practices of respondents as alleged above, constitute violations of subsection (d) of Section 2 of the amended Clayton Act.

ORDER VACATING CONSENT AGREEMENT

The Commission on October 24, 1962, having accepted a consent agreement in the above-captioned matter containing an order directing respondents to cease and desist from certain practices constituting violations of Section 2(d) of the Clayton Act, as amended, which agreement provided that the order was not to become effective until the Commission issued an order "deciding on the merits the issues involved" in *Admiral Corp.*, F.T.C. Docket No. 7094 [p. 375 herein]; and the Commission on April 7, 1965, having dismissed the Section 2(d) charges in Docket 7094 not on the merits (see p. 424 of the Commission's opinion) but on the ground that respondent had been denied an adequate opportunity to present its defense; and the Commission having no reason to believe that the present respondents are now engaged in, or intend to resume, any practices forbidden by the terms of the Commission's cease and desist order herein; and it further appearing that equitable treatment of competitors, and the public interest, would not be advanced by making a cease and desist order effective at this time against the respondents:

It is ordered, Pursuant to Section 3.27 of the Commission's Rules (effective August 1, 1963), that the consent agreement, jurisdictional findings, and cease and desist order in the above-captioned matter be,

