

Complaint

IN THE MATTER OF

THE SPERRY AND HUTCHINSON COMPANY

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

Docket 8671. Complaint, Nov. 15, 1965—Decision, June 26, 1968

Order requiring the Nation's largest trading stamp company to cease setting a maximum number of stamps to be dispensed by its retail licensees in relation to the price of the goods sold, conspiring with others to enforce its policy of limitation, and suppressing the operation of trading stamp exchanges and other stamp redemption activity.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Sperry and Hutchinson Company, a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), 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 with respect thereto as follows:

1. *DEFINITIONS.* For the purposes of this complaint, the following definitions shall apply:

(a) "Trading stamps" are small, gummed pieces of paper about the size of postage stamps, bearing on their face the name, trademark, or like insignia of the company which originally issued them. Customarily, retail merchants dispense them to their customers in connection with the sale of goods or furnishing of services, pursuant to the terms and conditions of contracts between such merchants and the company from which they secured the stamps.

(b) "Redemption of trading stamps" is the exchange of goods, wares, or merchandise, referred to at times hereinafter as "redemption merchandise," for trading stamps. Such redemption customarily takes place at a "redemption store."

(c) A "trading stamp company" is a firm engaged in the business of issuing and selling trading stamps to retail merchants and of redeeming such stamps from the customers of such merchants. The respondent herein is a trading stamp company.

(d) A "contracting retailer" is a retail merchant or business man who has entered into a contract with a trading stamp company, pursuant to the terms and conditions of which contract such retail merchant or businessman purchases trading stamps from such trading stamp company and dispenses them to members of the consuming pub-

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lic in connection with the sale of goods or furnishing of services to consumers.

(e) "Trading stamp exchanges" are persons or businesses engaged in the exchange of trading stamps issued by one trading stamp company for those issued by another, or engaged in the sale and/or purchase of trading stamps to and/or from members of the consuming public.

(f) "Double stamping" is the dispensing of two trading stamps for each ten cents worth of goods or services.

(g) "Bonus stamping" is the dispensing of a number of extra stamps in connection with the sale of a specified item or in connection with total purchases exceeding a specified amount.

(h) "Free stamping" is the dispensing of stamps to customers other than in connection with the sale of goods or services.

2. Respondent, The Sperry and Hutchinson Company, more commonly known as "S&H" and hereinafter sometimes referred to either as "Sperry and Hutchinson" or "respondent," is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 330 Madison Avenue, New York, New York. It is the leading trading stamp company in the United States, one of the few trading stamp companies operating on a nationwide or nearly nationwide basis, and has annual gross receipts of over \$300 million. It issues and sells approximately 40% of all trading stamps in the United States. About 60% of all households in the United States save its "S&H" trading stamps, also called "green stamps."

3. Trading stamp companies in the United States collect each year about \$800 million for the approximately 400 billion trading stamps they issue and sell to the more than 200,000 retail establishments with which they have entered into contracts. Such establishments include food supermarkets, drug stores, and gasoline stations, as principal customers, and a large variety of retail stores and service firms. Trading stamps are issued in connection with annual sales to the consuming public of over \$40 billion in goods and services, including at least half of all grocery sales.

4. As indicated hereinabove, trading stamp companies, including the respondent, sell or issue for valuable consideration pads of trading stamps to retailers, in accordance with the terms and conditions of the contracts entered into between such retailers and such trading stamp companies. Pursuant to the terms and conditions of such contracts, the retailers dispense trading stamps to members of the consuming public, in connection with the sale and furnishing of goods and services to

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the latter. Pursuant also to such contracts, trading stamp companies, including the respondent, maintain redemption stores where members of the consuming public having stamps may exchange, or redeem, such stamps, when they have been pasted into books furnished for this purpose, for merchandise available from such redemption stores.

Sperry and Hutchinson operates over 850 trading stamp redemption stores throughout the United States, through which it annually distributes to stamp-holding members of the consuming public redemption merchandise purchased at a cost to Sperry and Hutchinson of over \$150 million. It has entered into contracts with more than 70,000 retail outlets for the distribution of S&H trading stamps. These contracting retailers annually dispense approximately 145 billion S&H stamps to members of the consuming public, pursuant to the terms and conditions of such contracts, in connection with the sale and furnishing to the public of goods and services valued at approximately \$13 billion annually.

5. The respondent causes, and has caused, its trading stamps to be transported, distributed, and sold across State lines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, to retailers in the District of Columbia and in various States other than the State of origin of such stamps; has engaged in the negotiation and consummation of contracts for the issuance of such trading stamps across State lines and in such commerce; and has purchased, shipped and distributed, or purchased and caused to be shipped or distributed, various articles of merchandise across State lines either to redemption centers or to those members of the public who have ordered specific articles of merchandise by catalogues furnished by respondent in commerce for the redemption of trading stamps. Respondent maintains, and has continued to maintain, a course or current of trade in trading stamps and in the redemption of merchandise, in such commerce, as hereinbefore defined, and the volume of business in such commerce is now and has been substantial.

In the course and conduct of its business, respondent has been for many years, and is now, in substantial competition in the distribution or sale of trading stamps, with other trading stamp companies, except insofar as such competition has been lessened, restrained, or otherwise injured, as alleged hereinafter.

COUNT I

6. Paragraphs 1 through 5 of this complaint are incorporated into this count, as if they were stated verbatim herein.

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7. It is now, and has been for some time past, the practice or policy of respondent, Sperry and Hutchinson, to enter into, place into effect, and carry out certain agreements, understandings, and arrangements with various retailers, by means of conditions contained in its contracts with such retailers, whereby respondent compels or requires, or attempts to compel or require, such contracting retailers not to dispense more than one trading stamp for each full ten cents worth of goods or services, not to give "free stamps," and not to engage in "double stamping" or "bonus stamping," without special authorization or permission from respondent. By means of the conditions in its contracts with retailers and various other means and methods hereinafter described, respondent has entered into and effectuated the aforesaid practice and policy whereby it can and does control, establish, manipulate, and fix the number of trading stamps dispensed by such contracting retailers in relation to said retailers' sale of goods or services to consumers.

8. With respect to and in furtherance of the aforesaid practice or policy respondent has caused and is causing said contracting retailers to enter into or acquiesce in a combination, conspiracy, agreement, understanding, or planned common course of dealing, with respondent whereby the ratio of the number of trading stamps said retailers dispense to the price of goods or services offered for sale and sold by said retailers was and is fixed and maintained. More specifically, the aforesaid ratio of number of stamps to price of goods or services has been and is determined and established by respondent and observed by said retailers at one stamp for each ten cents of purchase price; **further, it** has secured or attempted to secure adherence by contracting retailers, sometimes at the behest of or on behalf of other contracting retailers, to the aforesaid practice and policy determined and established by respondent which restricts or limits the dispensing of trading stamps to not more than one trading stamp for each ten cents worth of goods or services sold by retailers; and it has threatened to cancel, and has actually cancelled, the contracts of retailers who would not adhere to or comply with the aforesaid practice and policy of respondent which restricts or limits the dispensing of trading stamps to not more than one trading stamp for each ten cents worth of goods or services sold by retailers.

9. The effect of the foregoing acts and practices has been and is:

(a) To tamper with price structures, price mechanisms or price levels, or otherwise to interfere with the free play of market forces in the merchandising of goods in the markets in which the affected contracting retailers operate, including the retail food market;

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(b) To restrain competition between retail merchants, including competition in the form of giving greater numbers of trading stamps;

(c) To induce and to put together a combination among retail merchants, in competition with one another, to limit such competition, including competition in the form of giving greater numbers of trading stamps;

(d) To deprive the members of the consuming public of a great number of additional trading stamps that might be dispensed to them but for the aforesaid acts and practices;

(e) Unfairly to deprive retail merchants of the opportunity to conduct their businesses, and dispose of trading stamps for which they have paid money, in accordance with their own decisions as to how best to serve the public.

10. The foregoing acts, practices, contractual provisions, and understandings are all to the prejudice and injury of the public, have restrained and hindered, or have a tendency to restrain and hinder, competition unduly, thereby constituting unfair methods of competition and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

11. Paragraphs 1 through 5 of this complaint are incorporated into this count, as if they were stated verbatim herein.

12. In the conduct of its business, respondent and other trading stamp companies not named herein as respondents, including but not limited to Top Value Enterprises, Inc., Gold Bond Stamp Company, E. F. MacDonald Stamp Company, King Korn Stamp Company, Merchants Green Trading Stamp Company, and Stop and Save Trading Stamp Corporation, for some years past and continuing to the present time, have and are now engaged in understandings, agreements, combinations, or conspiracies, and have pursued and cooperated in a common course of action or course of dealing between and among themselves, and with full knowledge of each other's activities in this respect as alleged below, to hinder, lessen, restrict, restrain, suppress, and eliminate competition in the course of the aforesaid commerce. In furtherance thereof, respondent, in combination with one or more of the other stamp companies hereinbefore named, and said other trading stamp companies, directly or indirectly, have on different occasions engaged in and carried out, and are now engaging in and carrying out, by various means and methods, the following acts and practices, among others:

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(a) They have each attempted to prevent and have prevented, by conditions contained in contracts with contracting retailers or otherwise, the dispensing of more than one trading stamp for each ten cents worth of goods or services sold by said retailers;

(b) They have each attempted to adopt, effectuate, enforce, and secure adherence to, and have adopted, effectuated, enforced, and secured adherence to, the uniform condition in contracts that the contracting retailers dispense not more than one stamp for each ten cents worth of services or goods sold;

(c) They have each attempted to induce and have induced contracting retailers not to dispense more than one trading stamp for each ten cents worth of goods or services sold by said retailers.

13. The effect of the foregoing acts and practices has been and is:

(a) To tamper with price structures, price mechanisms or price levels, or otherwise to interfere with the free play of market forces in the merchandising of goods in the markets in which the affected contracting retailers operate, including the retail food market;

(b) To restrain competition between retail merchants, including competition in the form of giving greater numbers of trading stamps;

(c) To induce and to put together a combination among retail merchants, in competition with one another, to limit such competition, including competition in the form of giving greater numbers of trading stamps;

(d) To deprive the members of the consuming public of a great number of additional trading stamps that might be dispensed to them but for the aforesaid acts and practices;

(e) Unfairly to deprive retail merchants of the opportunity to conduct their businesses, and dispose of trading stamps for which they have paid money, in accordance with their own decisions as to how best to serve the public;

(f) To limit and restrain competition between or among trading stamp companies in the distribution and sale of trading stamps.

14. The foregoing acts, practices, contractual provisions, and understandings are all to the prejudice and injury of the public, have restrained and hindered, or have a tendency to restrain and hinder, competition unduly, thereby constituting unfair methods of competition and unfair acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

15. Paragraphs 1 through 5 of this complaint are incorporated into this count, as if they were stated verbatim herein.

