

Decision and Order

shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 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.

It is further ordered. That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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

MRS. S. E. KATZ TRADING AS S. E. KATZ

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket C-1984. Complaint, July 20, 1971—Decision, July 20, 1971

Consent order requiring a St. Louis, Mo., individual engaged in the sale and distribution of textile fiber products, including scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, as amended, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Mrs. S. E. Katz, an individual trading as S. E. Katz, hereinafter referred to as respondent, has violated the provisions of said Acts and the Rules and Regulations promulgated under the Flammable Fabrics Act, as amended, 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 Mrs. S. E. Katz is an individual trad-

ing as S. E. Katz with her office and principal place of business located at 1000 Washington Avenue, St. Louis, Missouri.

Respondent is engaged in the business of the sale and distribution of textile fiber products including, but not limited to, scarves.

PAR. 2. Respondent is now and for some time last past has been engaged in the sale and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, products, as the terms "commerce" and "product," are defined in the Flammable Fabrics Act as amended, which products fail to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the Flammable Fabrics Act, as amended.

Among such products mentioned hereinabove were scarves.

PAR. 3. The aforesaid acts and practices of respondent were and are in violation of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 Consumer Protection 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 Flammable Fabrics Act, as amended; and

The respondent 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 Acts, and that complaint should issue stating its

charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mrs. S. E. Katz is an individual trading as S. E. Katz.

Respondent is engaged in the sale of various products, including but not limited to, ladies' scarves, with her office and principal place of business located at 1000 Washington Avenue, St. Louis, Missouri.

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

ORDER

It is ordered, That respondent Mrs. S. E. Katz, individually and trading as S. E. Katz or any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or selling or offering for sale any product made of fabric or related material which has been shipped or received in commerce, as "commerce," "product," "fabric" and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to any applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondent notify all of her customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect recall of said products from such customers.

It is further ordered, That the respondent herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondent herein shall, within ten (10) days after service upon her of this order, file with the Commission a special report in writing setting forth the respondent's inten-

tions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect recall of said products from customers, and of the results thereof, (4) any disposition of said products since September 20, 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products and the results of such action. Such report shall further inform the Commission as to whether respondent has in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of two ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondent shall submit samples of not less than one square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon her of this order, file with the Commission a report in writing setting forth in detail the manner and form in which she has complied with this order.

IN THE MATTER OF

BARTON'S CANDY CORPORATION

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

Docket C-1985. Complaint, July 21, 1971—Decision, July 21, 1971

Consent order requiring a Brooklyn, N.Y., candy and bakery goods manufacturer and franchisor with outlets in more than 40 states to cease fixing the resale price of any of its products, accepting any payment or other advantage from a supplier of fixtures to any of respondent's customers, misrepresenting that any analysis has been made of any projected sales volume of any store; it is further ordered that respondent notify each of its franchisees of the existence and terms of this order.

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 Barton's Candy Corporation, a corporation, sometimes referred to hereinafter as respondent, has violated and is now violating the provisions of Section 5 of said Act (15 U.S.C. § 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent Barton's Candy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. It maintains its principal offices and place of business at 80 DeKalb Avenue, Brooklyn, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, purchase, importation, offering for sale, sale, or distribution of chocolates, other candies and confections, baked goods, and nuts (hereinafter referred to as "products"). Respondent distributes, offers to sell, and sells its products to franchised "Barton's Bonbonniere" candy stores, to other franchised customers who maintain candy departments in department stores and drug stores, to wholesale distributors in some areas in which retailers cannot be serviced efficiently from the Brooklyn shipping point, and to consumers through company-owned stores in some areas. Total sales of respondent in its fiscal year ending June 30, 1969, exceeded \$16,000,000.

PAR. 3. Respondent ships products or causes products to be shipped to wholesale distributors and to nearly 3,000 retail stores or candy departments located in more than forty States of the United States. Respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent is engaged in competition in the distribution, offering for sale, and sale of its products with numerous other persons or firms handling similar types of products, except to the extent that such competition has been hampered, restricted, lessened and restrained by the acts, practices, and methods of competition hereinafter alleged.

COUNT ONE

PAR. 5. Respondent has sought prospects for investment in franchised Barton's retail outlets through newspaper advertisements, promotional brochures, and the personal effort of its agents or employees responsible for the establishment of new franchise operators.

In this connection, respondent has made the following representa-

tions to some prospective franchise operators through oral statements and some of its published materials:

1. A specific site has been selected by respondent for establishment of a franchise outlet. A survey has been conducted and the results electronically analyzed. According to such analysis, the volume of sales by such outlet should be approximately that amount which, in each specific instance, has been stated to the prospective franchisee.

2. An average Barton's department will have annual candy sales of up to as much as \$49,000, depending upon the size and location of the store.

PAR. 6. The representations aforesaid, each of which has been made for the purpose and with the effect of inducing prospects to enter into a franchise agreement, are false and misleading in that:

1. Information respecting selected sites has not been analyzed electronically or by other means. The volume of sales projected for each such site has been based solely upon opinion of respondent, its authorized agent or employee.

2. The annual retail sales volume of candy for the average franchised Bartons candy department such as those located in drug stores has been in all recent years and is now substantially less than \$49,000. No significant number of Barton's candy departments such as those located in drug stores have achieved a sales volume of as much as \$49,000, as represented by respondent.

PAR. 7. Respondent's false and misleading representations aforesaid are to the prejudice of the public; they have induced or helped to induce persons or firms to enter into franchise agreements with respondent and to purchase its products; and they constitute unfair or deceptive acts or practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT TWO

PAR. 8. Respondent, in accordance with the provisions of its franchise agreements, has reserved the right of approval of the plans and layout of Barton's franchised candy stores and candy departments. In this connection, respondent has recommended an on occasions has required directly or by implication, that its franchise operators purchase store fixtures and signs from manufacturers or fabricators designated by respondent.

PAR. 9. Respondent has failed to disclose to the franchise operators aforesaid that in some instances it has contracts, agreements, or understandings with the designated persons or firms supplying such fixtures and signs providing for payment to respondent of commissions, overrides, or service charges as compensation for engineering

or store planning services or "finder's fees" based upon a percentage of the purchase price of such fixtures or signs.

PAR. 10. Respondent's contracts, agreements, understandings, acts, practices, and methods of competition, including its failure to disclose the existence of its arrangements for compensation by suppliers designated by it, as aforesaid, have had and may continue to have the following effects, among others:

1. Some franchise operators have been led to believe, directly or by implication, that the recommendation or requirement by respondent to the purchase fixtures and signs from designated suppliers was based solely upon considerations of price, quality or service.

2. Some franchise operators have been deprived of the benefits of competition in their purchases of store fixtures and signs.

PAR. 11. Respondent's contracts, agreements understandings, acts, practices, and methods of competition aforesaid are to the prejudice of its franchise operators and the general public. They constitute unfair or deceptive acts or practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

COUNT THREE

PAR. 12. Respondent has entered into franchise agreements with numerous persons and firms which require that each retailer advertise, offer to sell, and sell respondent's products at not less than the retail prices established by respondent in accordance with the applicable "fair trade" laws. Respondent, directly or through corporate or other devices, is regularly engaged in the operation of retail outlets in some areas which are in competition with franchise operators who have signed agreements pursuant to which they are required to price products bearing respondent's trademarks in accordance with respondent's published "fair trade" prices.

PAR. 13. Respondent's acts, practices and methods of competition aforesaid which fix the resale prices of its products when sold by its franchised retail or wholesale competitors are to the prejudice of such competitors and of the public. They constitute unfair acts or practices or unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act.

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 thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, and having considered all comments received from members of the public, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Barton's Candy Corporation is a corporation which has its general offices and principal place of business located at 80 DeKalb Avenue, Brooklyn, New York.

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

It is ordered, That respondent Barton's Candy Corporation, a corporation, its officers, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the advertising, distribution, offering for sale, or sale of chocolates, other candies and confections, baked goods, nuts, and the franchise rights to deal in or handle such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Fixing, establishing, maintaining, or enforcing pursuant to or in connection with any fair trade program the resale price of any such product charged by any wholesaler or retailer who in

fact competes with Barton's either at wholesale or with retail stores or candy departments operated by the respondent.

2. Requesting, accepting, or entering into any contract, agreement or understanding providing for payment to respondent of anything of substantial value by the supplier of fixtures, signs, or other equipment and furnishings as a commission, override, "finder's fee," or other compensation for recommending or requiring any customer of respondent to deal with such supplier unless such customer of respondent is advised prior to entering into any franchise or other agreement of the fact that respondent will receive said compensation from such supplier and the approximate amount, percentage, or other means of computation thereof.

3. Representing, directly or by implication, that:

a. A survey has been made of store traffic patterns or that electronic or other means of analysis of projected sales volume has been performed, unless such is a fact.

b. Sales volume of a Barton's store or department is within a range, is a stated average amount, or may achieve a stated level, unless such is a fact with respect to a representative sample of outlets of comparable size, type and location.

II

It is further ordered, That respondent Barton's Candy Corporation furnish within sixty (60) days from the date hereof to all presently franchised retail outlets, wholesale distributors or other customers who in fact compete, or whose customers in fact compete, with Barton's or with retail stores or candy departments operated by respondent a letter or other notice, signed by a responsible official binding the respondent and on official Barton's Candy Corporation stationery or letterhead, which states in its first paragraph: "The Federal Trade Commission has entered an Order which, among other things, prohibits Barton's Candy Corporation from fixing resale prices of its customers as more fully set forth in the relevant provisions of the order which are [stated below/enclosed]." The relevant provisions of this order which shall be included in such letters are the opening paragraph and numbered Paragraph 1 of Section I thereof.

III

It is further ordered, That respondent Barton's Candy Corporation shall forthwith distribute a copy of this order to each of its

sales personnel and each of its other employees engaged in establishing and maintaining franchises.

IV

It is further ordered, That respondent Barton's Candy Corporation notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of or dissolution of subsidiaries or any other change in the corporation.

V

It is further ordered, That respondent Barton's Candy Corporation shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

BESTLINE PRODUCTS CORPORATION, ET AL.

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

Docket C-1986. Complaint, July 22, 1971—Decision, July 22, 1971.

Consent order requiring a San Jose, Calif., seller and distributor of household, commercial and industrial cleaners and waxes, and also distributorships for the sale of respondents' products, to cease operating a multi-level program in which profits are dependent upon successive recruitment of others, paying any amount to any person unless in connection with the actual sale of products to the ultimate consumer, requiring prospective participants to make any other payment than that of the actual cost of materials, misusing in any manner the multi-level marketing program, misrepresenting the past earnings of participants, and making other misrepresentations as to the earnings of participants in the multi-level marketing programs.

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 Bestline Products Corporation and Bestline Products, Inc., corporations, and William E. Bailey and Robert W. DePew, individually and as officers of said

corporations, 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 Bestline Products Corporation, 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 2350 Trimble Road, San Jose, California.

Respondent Bestline Products, Inc., 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 2350 Trimble Road, San Jose, California. It is a wholly-owned subsidiary of Bestline Products Corporation.

Respondents William E. Bailey and Robert W. DePew are officers and stockholders of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondents.

The aforementioned respondents cooperate and act together in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of household, commercial and industrial cleaners and waxes and distributorships and franchises to the public, and are inducing, and have induced, persons to invest substantial sums of money in respondents' multi-level marketing program as hereinafter more fully described.

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 places of business in the States of Illinois and California to purchasers thereof located in various States of the United States other than the state of origination, and in the course of establishing and maintaining their multi-level marketing program have transmitted and received contracts, promotional material and various business papers among and between the several 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 course and conduct of their business as aforesaid,

respondents have used and are now using a multi-level marketing program having four levels of participants. A description of these levels, in order of ascendancy, follows:

1. Retail distributor—The retail distributor purchases products from a subwholesaler or direct distributor at a 30-40 percent discount, for sale to the consuming public.

2. Subwholesaler—The subwholesaler purchases products from a direct-distributor at a 30-51 percent discount for distribution to retail distributors and direct sales to the consuming public. The subwholesaler is entitled to overrides on purchases by retail distributors below him in the chain. He is also entitled to a bonus for recruiting a direct distributor and a commission for recruiting another subwholesaler. An entrant qualifies as a subwholesaler upon purchasing products with a \$400 "refund volume" value.

3. Direct distributor—The direct distributor purchases products directly from the respondents at a 52 percent discount for distribution to subwholesalers and retailers below him in the chain. He is entitled to 22 percent of the "refund volume" value of purchases, made by subwholesalers and retail distributors below him in the chain, less refund bonuses paid according to the sales volume generated by these subdistributors. The direct distributor also receives a commission and continuing override on purchases by a direct distributor or subwholesaler who he has recruited into the marketing program. A participant qualifies as a direct distributor upon purchasing \$6,000 "refund volume" value of products at a cost of \$3,500.

4. General distributor—The general distributor does not normally purchase products for distribution in the chain but he may purchase products at a 60 percent discount. The general distributor is entitled to a commission and continuing override on all purchases by a direct distributor recruited by him, a release fee paid by a direct distributor recruited by him at such time as the direct distributor ascends to the position of general distributor, and a commission and continuing override on all purchases by a general distributor originally recruited by him.

To qualify as a general distributor, a participant must first be a direct distributor, and is required to pay \$2,750 to the respondents and recruit a direct distributor to replace him.

Participants at each level of distribution may sell products on a retail basis to the consuming public.

Respondents represent through oral and written statements to prospective investors that it is not difficult to sell their household cleaning products and to recruit additional participants in their market-

ing plan and thereby achieve high levels of income. Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

1. If a subwholesaler recruits six (6) retailers and each of those six buy from the subwholesaler \$200 in products in one month, and in addition the subwholesaler sells \$200 in products at the retail level, the subwholesaler will earn in profit \$210 that month.

2. In the following month, if each of the six (6) retailers initially recruited by the subwholesaler in the example above recruits six (6) retailers below them in the chain, the subwholesaler may become a direct distributor and the initial six (6) retailers may become subwholesalers. If each of the thirty-six (36) new retailers buys \$200 in products from their respective subwholesalers, and the six (6) subwholesalers buy \$1,400 in products from the direct distributor, and the direct distributor sells \$200 in products at retail, the direct distributor will earn in profit \$1,046 that month.

PAR. 5. Respondents' multi-level marketing program contemplates a virtually endless recruiting of participants in the sales program. Further, additional participants must increase progressively to insure the participants the represented financial gains while the overall number of potential investors remains relatively constant. Thus, the participant may be, and in a substantial number of instances will be, unable to find additional investors in a given community or geographical area by the time he enters respondents' merchandising program. This comes about because the recruiting of participants who come into the program at an earlier stage has already exhausted the number of prospective participants. As to the individual participant, therefore, respondents' program must of necessity ultimately collapse when the market for distributors becomes saturated.

Although some participants in respondents' multi-level merchandising program may realize a profit, all participants do not have the potentiality of receiving sums of money equal to or greater than those described in Paragraph Four through recruiting other participants and through finder's fees, commissions, overrides, and other compensation arising out of the sale of respondents' products or the recruitment of other distributors by other participants in the program. As a matter of fact, some participants in the program will receive little or no return on their investment.

For the foregoing reasons, respondents' multi-level merchandising program is organized and operated in such a manner that the realization of profit by any participant contemplates, and is necessarily predicated upon, the exploitation of others who have virtually no

chance of receiving a return on their investment and who have been induced to participate by misrepresentations as to potential earnings. Therefore, the use by respondents of the aforesaid program in connection with the sale of their merchandise was and is an unfair act and practice, and was and is false, misleading and deceptive.

PAR. 6. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their products, and the purchase of distributorships and participation in their multi-level marketing program, the respondents have made, and are now making numerous statements and representations in certain promotional materials, including, but not limited to, film strips, long play records, recorded tapes, news letters, information manuals, marketing plan booklets, meeting scripts and other materials.

Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following:

1. By the time you get the job done, you may have fifty retailers and twenty-five sub-wholesalers * * * [sic].

2. With a little work it is obvious that you could become a direct distributor your second month with the company.

3. We'll show you how you can earn * * * \$100—\$300—\$500 a month and for those a little more serious, \$1000 and \$2,000 per month and more.

100 for working approximately two hours a day.

This is the position that is designed to earn \$2,000, \$3,000 a month and up, and we've got lots of folks, some of them right here in this room, today, who are doing that.

4. It has worked time and time again for hundreds of people in Bestline.

There is no limit to the number of direct distributors that you are allowed to recruit nor to the new areas you can open up with your business.

PAR. 7. By and through the use of the above-quoted statements and representations, and others of similar import and meaning, but not expressly set out herein, and for the purpose of inducing participation by others in their said marketing program and the purchase of their said merchandise, respondents and their agents and representatives, represent, and have represented, directly or by implication, to prospective participants, that:

1. It is not difficult for investors to recruit and retain persons who will invest in said program as distributors and as sales personnel to work home routes and sell respondents' products door-to-door so as to enable said investors to recoup their investment and to earn the represented profits set forth herein.

2. It is not difficult for participants to ascend to a higher level of distribution within the marketing chain so as to increase the chances of said participants to recoup their investment and to earn the represented profits set forth herein.

3. Participants in their said marketing program have the potentiality and reasonable expectancy of receiving large profits or earnings.

4. The said marketing program is commercially feasible for all participants and the supply of available entrants and investors is virtually inexhaustible.

PAR. 8. In truth and in fact:

1. It is difficult for investors to recruit and retain persons who will invest in said program as distributors and as sales personnel to work home routes and sell respondents' products door-to-door so as to enable said investors to recoup their investment and to earn the represented profits set forth herein.

2. It is difficult for participants to ascend to a higher level of distribution within the marketing chain so as to increase the chances of said participants to recoup their investment and to earn the represented profits set forth herein.

3. For the reasons hereinabove set forth, participants in respondents' marketing program do not have the potentiality and reasonable expectancy of receiving large profits or earnings.

4. The said marketing program is not commercially feasible for all participants and by the nature of the said marketing plan as herein described the supply of available entrants and investors must ultimately be exhausted.

Therefore, the statements and representatives as set forth in Paragraphs Six and Seven have been and are false, misleading and deceptive.

PAR. 9. Respondents' merchandising program is in the nature of a lottery in that participants are induced to invest substantial sums of money on the possibility that by the activities and efforts of others, over whom they exercise no control or direction, they will receive the profits described in Paragraphs Four and Six herein. The realization of such financial gain is not dependent on the skill and effort of the individual participant, but is the result of elements of chance including the number of prior participants and the degree of saturation of the market which exists when the participant is induced to make his investment.

The use by respondents of a multi-level marketing program, which is in the nature of a lottery, is contrary to the established public policy of the United States and is an unfair act and practice.

PAR. 10. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition in com-

merce with corporations, firms and individuals in the sale of home care products of the same general kind and nature as those sold by respondents.

PAR. 11. The use by the 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 public into the erroneous and mistaken belief that said statements and representations were and are true and into the investment of substantial sums of money to participate in the respondents' multi-level marketing program and the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 12. The aforesaid acts and practices of the 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 methods 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 the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the 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 and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to § 2.34(b) of its Rules, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission

hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Bestline Products Corporation, 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 2350 Trimble Road, San Jose, California.

Respondent Bestline Products, Inc., 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 2350 Trimble Road, San Jose, California. It is a wholly-owned subsidiary of Bestline Products Corporation.

Respondents William E. Bailey and Robert W. DePew are officers and stockholders of the corporate respondents. Their address is the same as that of the corporate respondents.

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 Bestline Products, Inc., Bestline Products Corporation, corporations, and their officers and William E. Bailey and Robert W. DePew, individually and as officers of said corporation and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale or distribution of household, industrial or commercial cleaners or waxes or other products or of distributorships or franchises in a multi-level or other marketing program or with the seeking to induce or inducing the participation of persons, firms, or corporations in a multi-level or other marketing program in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Operating or, directly or indirectly, participating in the operation of any multi-level marketing program wherein the financial gains to the participants are dependent upon the continued, successive recruitment of other participants.

2. Offering to pay, paying or authorizing the payment of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration to any participants in respondent's multi-level marketing program for the solicitation or recruitment of other participants therein.

3. Offering to pay, paying or authorizing payment of any

bonus, override, commission, cross-commission, discount, rebate, dividend or other consideration to any person, firm or corporation in connection with the sale of any product or service under respondent's multi-level marketing program unless such person, firm or corporation performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale and delivery of such products to the ultimate consumer.

4. Requiring prospective participants or participants in respondents' said program to purchase the product or pay any other consideration, other than payment for the actual cost of necessary sales materials, in order to participate in any manner therein: *Provided, however*, That respondents may require or may suggest the purchase of specific and reasonable inventories only, by any distributor, on the express condition that respondents at the same time agree to repurchase any unused and undamaged portion of an initial inventory from any purchaser thereof at full cost less reasonable shipping costs, if any, within 90 days from the delivery of the product at the option of the purchaser; *Provided further*, however, that if inventory costs reach \$500 or more, within said 90 day period, then said obligation to repurchase shall cease immediately upon participant's tendering a subsequent order to purchase the product.

5. Using any multi-level marketing program, either directly or indirectly:

(a) Wherein any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profit inuring to participants therein is dependent on the element of chance dominating over the skill or judgment of the participants; or

(b) Wherein no amount of judgment or skill exercised by the participant has any appreciable effect upon any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profits which the participant may receive; or

(c) Wherein the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount of any finder's fee, bonus, override, commission, cross-commission, discount, rebate, dividend or other compensation or profit which he may receive or be entitled to receive.

6. Using any multi-level marketing program which fails to:

(a) Inform orally all participants in respondents' multi-

level marketing programs and to provide in writing in all contracts of participation that the contract may be cancelled for any reason by notification to respondents in writing within three working days from the date of execution of such contract.

(b) Refund immediately all monies to (1) participants who have requested contract cancellation in writing within three working days from the execution thereof, and (2) participants showing that respondents' contract solicitations or performance were attended by or involved violation of any of the provisions of this order.

7. Representing, directly or by implication, that participants in respondents' multi-level marketing programs will earn or receive any stated or gross or net amount; or representing, in any manner, the past earnings of participants unless in fact the past earnings represented are those of a substantial number of participants in the community or geographical area in which such representations are made and accurately reflect the average earnings of these participants under circumstances similar to those of the participant or prospective participant to whom the representation is made.

8. Representing, directly or by implication, that it is not difficult for participants to recruit or retain persons to invest in respondents' multi-level marketing programs as distributors or as sales personnel to work home routes or sell respondents' products door-to-door or any other manner.

9. Representing, directly or by implication, that it is not difficult for participants to ascend to a higher level of distribution within the marketing chain.

10. Representing, directly or by implication, that all participants in the respondents' multi-level marketing program or any other sales program will succeed.

11. Representing, directly or by implication, that the supply of available entrants or investors in the respondents' marketing program is inexhaustible; or misrepresenting, in any manner, the availability of such entrants or investors.

12. (a) Failing to disclose, orally and in writing, the terms of this order to cease and desist to all present and future distributors, salesmen or other persons engaged in the sale of respondents' products, services, or merchandising programs, and securing from each such distributor, salesmen or other person a signed statement evidencing receipt of said disclosure.

(b) Failing to make available on request a copy of this cease and desist order to any participant or prospective participant.

It is further ordered, That respondents 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.

It is further ordered, That the respondent corporations shall forthwith, distribute a copy of this order to each of their operating divisions.

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

DRUG FAIR, INC., TRADING AS DRUG FAIR

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

Docket C-1987. Complaint, July 23, 1971—Decision, July 23, 1971

Consent order requiring a chain of retail drugstores with headquarters in Alexandria, Va., to cease preticketing private brand merchandise with any stated price, using the words "SUMMER DISCOUNTS" and other special words unless the price is an actual discount, misrepresenting that the customer is afforded a savings, and failing to maintain adequate records to support savings claims.

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 Drug Fair, Inc., a corporation, trading as Drug Fair, and certain subsidiary corporations of Drug Fair, Inc., 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 Drug Fair, Inc., trading as Drug Fair, is a corporation organized, existing and doing business under and by

Complaint

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virtue of the laws of the State of Maryland, with its principal office and place of business located at 6315 Bren Mar Drive, in Alexandria, Commonwealth of Virginia. Respondent from its aforementioned principal place of business is responsible for all the acts and practices of the aforementioned subsidiary corporations hereinbefore referred to as respondents in this complaint.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the operation of a chain of retail drug stores and in the advertising, offering for sale, and sale of drugs, cosmetics, film, developing and printing film and other articles of merchandise and service to the public, at retail.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused, its said merchandise to be shipped from its principal place of business in the Commonwealth of Virginia to its retail outlets located in various other States of the United States and in the District of Columbia, and has operated retail drug stores wherein its said goods and services have been sold and distributed wholly within the geographical confines of the District of Columbia; and has advertised its merchandise and services in newspapers and by radio and television circulated, distributed and transmitted among and between the several states and the District of Columbia, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products and services in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its merchandise, respondent has caused certain of its private brand merchandise to be preticketed with various price amounts and has made, and is now making, numerous statements and representations respecting the selling price and savings for such articles and other non-preticketed merchandise and services in advertisements inserted in newspapers of general interstate circulation, by means of radio and television broadcasts, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following:

ANNIVERSARY SALE * * *
 AUTOMOTIVE SPECIAL * * *
 2.50
 BUCKINGHAM
 5-qt. SAE 10W30
 MOTOR OIL
 99¢ * * *

SUMMER CLEARANCE * * *
 69¢ DRUG FAIR
 SUPER STAINLESS
 DOUBLE EDGE
 BLADES
 PACK OF 5
 48¢ * * *

SUMMER DISCOUNTS * * *

1.09
 DRUG FAIR
 STAINLESS
 DOUBLE EDGE
 BLADES
 10's
 88¢ * * *

When you pick up your
 finished prints
 we will give you a
FREE ROLL OF KODAK FILM
 for each and every
 roll you had
 developed and printed.

89¢ DRUG FAIR
 INJECTOR
 BLADES
 64¢

**FREE
 KODAK
 FILM**

7 Stainless injector blades * * *

PAR. 5. By and through the use of the above-quoted statements and representations, and others of similar import and meaning not expressly set out herein, respondent has represented, and is now representing, directly or by implication, that:

1. The preticketed prices shown on respondent's razor blades and motor oil are the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business.

2. The advertised preticketed prices for respondent's razor blades and motor oil are the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and that purchasers save the difference between said higher preticketed prices and respondent's advertised selling price.

3. Each of the articles of merchandise offered for sale in the advertisements bearing the words "Summer Discount," "Holiday Discount," "Summer Clearance," "Automotive Special," or other words of similar import and meaning, were being offered for sale at special or reduced prices from the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and that purchasers realized a savings between respondent's regular price and its advertised price for such merchandise.

4. Customers will receive a free roll of Kodak film for each and every roll of film developed and printed.

PAR. 6. In truth and in fact:

1. The preticketed prices shown on respondent's razor blades and motor oil are not the prices at which respondent has made a bona

bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business.

2. The advertised preticketed prices for respondent's razor blades and motor oil are not the prices at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and purchasers do not save the difference between the higher preticketed prices and respondent's advertised selling price.

3. Each of the articles of merchandise offered for sale in the advertisements bearing the words, "Summer Discount," "Holiday Discount," "Summer Clearance," "Automotive Special," or other words of similar import and meaning were not being offered for sale at special or reduced prices from the price at which respondent has made a bona fide offer to sell or has sold said merchandise on a regular basis for a reasonably substantial period of time in the recent, regular course of its business and purchasers do not realize a savings between respondent's regular price and its advertised price for such merchandise.

4. Customers do not receive a free roll of Kodak film for each and every roll developed and printed; the developing and printing charges include the cost of the replacement roll of film.

Therefore, the aforesaid statements, representations, acts and practices were, and are, false, misleading and deceptive.

PAR. 7. In the conduct of its aforesaid business and at all times mentioned herein, respondent has been, and is now, in substantial competition, in commerce, with corporations, firms and individuals engaged in the advertising, offering for sale and sale of merchandise and services of the same general kind and nature as that sold by respondent.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public concerning the savings available to them on respondent's merchandise and, more generally, to mislead them into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's merchandise and services by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of respondent as set forth above were, and are, all to the prejudice and injury of the public and of

respondent's 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 Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Washington Area Field Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now, in further conformity with the procedure prescribed in such Rule, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Drug Fair, Inc., trading as Drug Fair, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 6315 Bren Mar Drive, in Alexandria, Commonwealth of Virginia. Respondent from its aforementioned principal place of business is responsible for all the acts and practices of its subsidiary corporations.

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 respondent Drug Fair, Inc., a corporation, and its officers, and its subsidiaries and their officers, trading as Drug Fair, or under any other trade name or names and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, and sale of drugs, cosmetics, film, developing and printing film or any other products or services, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Preticketing private brand merchandise with any stated price, or representing, directly or by implication, that any price amount is respondent's regular price for any article of merchandise unless said amount is the price at which such merchandise has been sold or offered for sale in good faith by respondent for a reasonably substantial period of time in the recent, regular course of its business and not for the purpose of establishing fictitious higher prices upon which a deceptive comparison might be based.

2. Using the words "SUMMER CLEARANCE," "SUMMER DISCOUNTS," "SPECIAL," or any other word or words of similar import or meaning unless the price advertised for any of respondent's merchandise being offered for sale constitutes a reduction in an amount not so insignificant as to be meaningless, from the actual bona fide price at which the advertised merchandise was sold or offered for sale to the public on a regular basis by respondent for a reasonably substantial period of time in the recent course of its business: *Provided, however,* That respondent may use such words or expressions of similar import, as mentioned above, in advertising or other promotional materials containing non-sale items if clear and conspicuous disclosure is made in immediate conjunction with said representations that non-sale items are contained therein and if said non-sale items are distinctively identified.

3. Representing, in any manner, that by purchasing any of respondent's merchandise customers are afforded savings amounting to the difference between respondent's stated price and respondent's former price unless such merchandise has been sold or offered for sale in good faith at the former price by respondent for a reasonably substantial period of time in the recent, regular course of its business.

4. Failing to maintain adequate records, (a) which disclose the facts upon which any savings claims, including former pricing claims, sale claims and similar representations of the type as set forth in Paragraphs One through Three of this order are based, and (b) from which the validity of any savings claim, including former pricing claims, sales claims and similar representations of this type described in Paragraphs One through Three of this order can be determined.

5. Misrepresenting in any manner, the price at which any of respondent's merchandise is sold at retail or the savings afforded in the purchase thereof.

6. Representing, directly or indirectly, that any article of merchandise is being given free or without charge or cost or as a gift, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately for a substantial period of time in the recent and regular course of respondent's business.

It is further ordered, That respondent deliver a copy of this order to all present and future personnel of respondent engaged in offering for sale, or sale of any product or in any aspect of preparation, creation, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions and to each of its subsidiary corporations.

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.

It is further ordered, That the acts and practices of respondent Drug Fair, Inc.'s, subsidiaries, unnamed herein, will be subject to the terms and provisions of this order just as if the respondent Drug Fair, Inc.'s, said unnamed subsidiaries were individually named herein.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

