

Complaint

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the Commission's cease and desist order. The Commission has determined that this matter is indistinguishable from the matter of *Wilbanks Carpet Specialists, Inc., et al.*, Docket 8933, inasmuch as the record presents insufficient evidence that a consumer warning is a necessary or appropriate means for the termination of the acts or practices complained of or for the prevention of their recurrence. Having declined to order a consumer warning in the *Wilbanks* matter, the Commission has concluded that the same disposition is warranted herein.

Accordingly, the initial decision issued by the judge should be modified in accordance with the foregoing views of the Commission, and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision issued by the administrative law judge be modified by striking therefrom the following:

Those portions of the conclusions of law which concern "consumer warning" relief (at pp. 45-47 [pp. 1112-1113 herein], *sub nom.* "THE REMEDY"); and the second "FURTHER ORDERED" paragraph of the order to cease and desist issued by the judge (at p. 57) [p. 1120 herein].

As so modified, the initial decision is hereby adopted.

IN THE MATTER OF

LAWRY'S FOODS, INC.

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

Docket C-2575. Complaint, Oct. 16, 1974—Decision, Oct. 16, 1974

Consent order requiring a Los Angeles, Calif., manufacturer and distributor of salad dressings, seasonings, and other food products, among other things to cease discriminating in paying promotional allowances among competing distributors of its products.

Appearances

For the Commission: *Paul R. Roark.*

For the respondent: *Thomas J. McDermott, Jr., Kadison, Peaelzer, Woodward & Quinn, Los Angeles, Calif.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the party named in the caption hereof, and hereinafter more fully described, has violated and is now violating the provisions of Section 2(d) of the

Clayton Act, as amended (U.S.C. Title 15, Section 13), 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 as follows:

PARAGRAPH 1. Respondent Lawry's Foods, 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 568 San Fernando Road, Los Angeles, Calif.

PAR. 2. Respondent is now and has been for many years engaged in the manufacture, distribution and sale of salad dressings, seasonings and other food products to customers throughout the United States. These customers offer such merchandise for sale to the public.

PAR. 3. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships its products or causes such products to be shipped from its factory in Los Angeles, Calif., to purchasers located in other states. Respondent's sales of its products are substantial, and in the calendar year of 1971 amounted to \$32,550,838.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality, consisting of salad dressings, seasonings and other food products to purchasers who are in substantial competition with each other in the sale and distribution of such products.

PAR. 5. In the course and conduct of its business in commerce as aforesaid, respondent has paid or authorized payment of money, goods or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale or offering for sale of respondent's products and respondent has not made or offered to make such payments, allowances or consideration available on proportionally equal terms to all of its other customers competing with the customers so favored in the sale and distribution of its products.

For example, respondent has paid promotional allowances to certain customers wherein minimum purchases were required to obtain such promotional allowances. Proportionally equal promotional allowances were not made available to those competing customers who could not meet the stated minimum purchase requirements.

PAR. 6. Respondent's acts and practices as alleged in Paragraph Five above are in violation of Section 2(d) of the aforesaid Clayton Act, as amended.

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 Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 2(d) of the Clayton Act as amended (U.S.C. Title 15, Section 13); 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 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 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 Lawry's Foods, Inc. 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 568 San Fernando Road, Los Angeles, Calif.

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

It is ordered, That respondent Lawry's Foods, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale of salad dressings, seasonings, and other food products, in commerce as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any promotion or any other services or facilities furnished by or through such customer, in connection with the handling, offering for sale, or sale of said products, unless such payment or consideration is made available on proportionately equal terms to all other customers competing in the distribution of such products.

It is further ordered, That respondent shall forthwith distribute a copy of this order to all directors and officers of Lawry's Foods, Inc., and to any operating divisions if and when they are established.

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 the order.

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.

IN THE MATTER OF

ODEN DISTRIBUTING CO., INC., ET AL.

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

Docket C-2576. Complaint, Oct. 16, 1974—Decision, Oct. 16, 1974

Consent order requiring an Omaha, Neb., retailer of sewing machines and other products, among other things to cease using deceptive contests and false pricing claims to sell sewing machines and other products.

Appearances

For the Commission: *F. Kelly Smith, Jr.*

For the respondents: *David S. Lathrop, Lathrop, Albracht & Dolan,*
Omaha, Neb.

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

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Commission, having reason to believe that Oden Distributing Co., Inc., a corporation, and Donald W. Oden, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Oden Distributing Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 4814 Dodge Street, in the city of Omaha, State of Nebraska.

Respondent Donald W. Oden is an individual and an officer of the corporate respondent. He formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of sewing machines and other products to the public.

PAR. 3. In the course and conduct of their business as aforesaid, 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 Nebraska to purchasers thereof located in the State of Iowa and 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 course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in commerce with corporations, firms, and individuals in the sale of sewing machines and other products and related services; said sewing machines and other products and services being of the same general kind and nature as those sold by respondents' competition.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products and services, the respondents have made and are now making numerous statements and representations in newspapers, direct mail advertising, promotional materials, and by other means with respect to the prices, contests, promotional programs, prizes, characteristics, and guarantees of their merchandise.

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

You have been selected at random in your area to participate in the all new

60TH ANNIVERSARY JACKPOT

It's Fun! It's Easy! Remove the Lucky Pull Tab on this letter. You may have already hit the NECCHI Jackpot GRAND PRIZE or one of many other prizes. If you have a symbol shown at the bottom of the page, you are a WINNER.

YOUR JACKPOT UNDER TAB _____ PULL TAB

EXAMPLE: If you should have 3 NECCHI'S (GRAND PRIZE) you will receive a brand new SEWING MACHINE. THIS COMPLETE PORTABLE COMES EQUIPPED TO ZIG-ZAG, SEW FORWARD AND REVERSE, MONOGRAM, MAKE BUTTON-HOLES, OVERCAST, AND DO MOST NEEDED STITCHES.

The only requirement our company makes is that you take out a 3 year service warranty and instruction policy at \$1.50 per month. * * *

* * * * *

Here is your opportunity to SAVE! SAVE! SAVE! and beat the high cost of clothing the easy, simplified NECCHI-ALCO way. Yes, with the enclosed Introductory Credit Check you can own a world famous * * * NECCHI or ALCO Sewing Machine at savings never before offered! * * *

EXAMPLE:

NEW ZIG-ZAG SEWING MACHINE	\$99.50
Less Your Credit Check	<u>50.00</u>
YOUR TOTAL COST ONLY	\$49.50

* * * * *

You are one of a very special group to receive this offer

Ask the people next door * * * * (sic)

* * * * (sic) Confirm the fact that their name is not in the group selected to receive this letter. * * * *

You are not a casual choice * * * (sic) this letter was mailed to you after careful investigation of the Omaha area, its growth rate, residents buying habits, and the market potential of our product.

Here's what we intend to do for you and why! We want to place a certain number of our newest model sewing machines in selected homes like yours and for a very good reason. A company survey has shown that owners of our machines sell an average of two units (usually by referral to friends, relatives, etc.) within three years of purchase. Thousands of dollars could be spent advertising in newspapers, T.V., radio, etc., but we want instead to pass these large amounts directly to you.

Here's how * * * (sic) a new ZIG ZAG equipped sewing machine that buttonholes, monograms, overcasts, sews reverse, darns-mends, and does most any sewing job regularly sells for \$149.95 (sic). This complete portable machine will be made available to you for a total cost of only \$44.95. A terrific direct savings to you of \$105. Budget terms available if you prefer. Remember * * * (sic) your total cost is only \$44.95.

PAR. 6. Through the use of the statements and representations set forth above and others of similar import and meaning, not specifically set out herein, separately and in connection with the oral statements and representations of their employees, agents, and representatives, respondents:

1. Represented, directly or by implication, that they have conducted bona fide contests, used analytical or scientific sampling techniques, or conducted marketing studies of the Omaha, Nebraska/Council Bluffs, Iowa, metropolitan area.

2. Represented, directly or by implication, that they offered free sewing machines or other products and services;

3. Represented, directly or by implication, that purchasers of products or services advertised were afforded savings equal to the difference between higher and lower prices claimed or listed in said statements or other representations.

PAR. 6. In truth and in fact:

1. Respondents have not conducted bona fide contests, nor have they used analytical or scientific sampling techniques or marketing studies of the Omaha, Nebraska/Council Bluffs, Iowa, metropolitan area.

2. The offered sewing machines or other products and services are not free but are offered only upon the contingent purchase of other products, services, warranties or instruction policies from respondents.

3. Purchasers of products and services were not afforded savings from the prices at which identical products and services were sold or offered for sale by respondents in the recent, regular course of their business.

Therefore, the statements and representations as set forth in Paragraphs Five and Six hereof were and are unfair, false, misleading and deceptive.

PAR. 8. Through the use of aforesaid representations and others of similar import and meaning, not specifically set out herein, respondents have failed to disclose certain material facts. Respondents have stated that recipients of certain advertisements were eligible to receive free sewing machines when they were designated in a contest as grand prize winners or special discounts when they were designated as winners of lesser prizes; when, in fact, all or nearly all recipients of said advertisements were grand prize winners and such designation did not entitle them to a free sewing machine without purchase of additional products or services.

Respondents' failure to disclose either the percentage of winners in each contest category or the nature of contingent purchases necessary for receipt of free sewing machines or other products and services has the capacity and tendency to lead said recipients to believe they were winners of a contest which entitled them to valuable and rare prizes.

Therefore, the acts and practices set forth in Paragraph Eight were and are unfair, false, misleading, and deceptive.

PAR. 9. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and practices, and their failure to disclose material facts, has had, and now has, a capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and into the purchase of sewing machines and other products and services from respondents by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were 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 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 Kansas City Regional 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 for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Oden Distributing Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State

