

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions and Orders
IN THE MATTER OF

PEOPLES DRUG STORES, INC.

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

Docket C-2773. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring an Alexandria, Va., drugstore chain, among other things to cease making, carrying out, or enforcing anticompetitive shopping center lease agreements.

Appearances

For the Commission: *Eugene R. Webb, James D. Tangires, Jerry W. Boykin and Gary M. Laden.*

For the respondents: *Robert A. Hammond, III, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, (15 U.S.C. §41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating the following:

PARAGRAPH 1. For the purpose of this complaint the following definitions shall apply:

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its subsidiaries, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of

retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drug store" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drug store. A drug store may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "exclusive covenants" refers to terms in a lease which provide that respondent shall be or shall have the right to be, the only drug store in a shopping center.

(f) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drug store in a shopping center where respondent already operates a drug store.

PAR. 2. Respondent 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 Dr., Alexandria, Virginia. Until October of 1974, respondent's principal place of business was located in the District of Columbia. Peoples is engaged in the operation of a chain of drug stores through wholly-owned subsidiaries, which are each named Peoples Service Drug Stores, Inc., except for a subsidiary in West Virginia which is named Peoples Drug Stores, Inc. These subsidiaries are each incorporated in one of the following States: Maryland, Virginia, Pennsylvania, North Carolina, West Virginia and Ohio.

PAR. 3. (a) In fiscal 1973, Peoples was one of the largest drugstore chains in the Eastern United States with sales in excess of \$241 million and 262 stores. Sites in shopping centers represent a substantial share of the company's total sales volume.

(b) In fiscal 1972, approximately fifty percent (50%) of Peoples' drug stores were located in the Washington, D.C. Standard Metropolitan Statistical Area (SMSA). These stores accounted for approximately thirty percent (30%) of the drug store sales in the Washington, D.C. SMSA. Peoples operates drug stores in thirteen (13) of the largest shopping centers as well as a large number of other shopping centers in the Washington, D.C. SMSA. A substantial amount of Peoples retail sales in the Washington, D.C. SMSA are derived from shopping center stores.

PAR. 4. (a) In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases for resale a great variety of consumer products from a large number of suppliers located throughout the United States. Respondent causes these

products, when purchased by it, to be transported from the place of manufacture or purchase to its business establishments located in the District of Columbia, Virginia, West Virginia, Pennsylvania, North Carolina, Ohio and other States. Such products have been and are advertised and offered for sale by respondent in newspapers circulated among and between the several States of the Nation and the District of Columbia.

(b) In the course of establishing its stores in shopping centers in the District of Columbia and in the States of Virginia, Maryland, West Virginia, Pennsylvania, North Carolina and Ohio, respondent has negotiated and executed lease agreements with developers. In the course of negotiating and executing these leases, exchanges of information and communications have occurred between respondent in the District of Columbia and developers in other States. Respondent has also used the United States mails in enforcing or otherwise acting with respect to its lease rights.

PAR. 5. Except to the extent that competition has been hindered, frustrated and eliminated as set forth in this complaint, respondent, in the course and conduct of its business of offering for sale and selling pharmaceutical products, food products, prescription drugs, household goods and apparel has been and is in substantial competition with other corporations, individuals and partnerships in the retail sale of the same or comparable brands of merchandise carried and sold by respondent.

PAR. 6. (a) In recent years, Peoples has entered into a substantial number of lease agreements with shopping center developers for the establishment of its drug stores in shopping centers. During the course of negotiating such leases, the developers have acceded to respondent's demands for exclusive covenants to protect it from actual and potential competition.

Typical and illustrative of said exclusive covenants, but not all-inclusive thereof, are the following:

Landlord covenants and agrees that it shall not permit any other Tenant or occupant in the shopping center to fill prescriptions or to operate a drug store during the term of this Lease and any renewal thereof, or to operate any store whose primary purpose is the sale of vitamins, or drugs, or medicinal items* * *. (a) Landlord covenants that it shall not permit any other tenant or occupant within the Shopping Center, or any expansion thereof, to fill prescriptions or operate a drugstore* * *. (b) In the event any other tenant or occupant in the Shopping Center * * * fills prescriptions or operates a drug store, the Landlord agrees to take forthwith all necessary legal steps to prevent such use, and upon failure to do so Tenant shall be entitled * * * to take such steps in the Landlord's name and at the Landlord's expense, and to deduct from rent thereafter accruing the Tenant's reasonable outlays and advances in so doing.

(b) In other shopping center leases with shopping center developers, developers have acceded to respondent's demands for restrictive

provisions which give Peoples "rights of first refusal" on placement of another drug store in those shopping centers, thereby protecting respondent from actual and potential competition.

Typical and illustrative of said "rights of first refusal," but not all-inclusive thereof, is the following:

If Landlord elects to lease additional premises in the shopping center building, * * * for the purpose of conducting therein the principal business of a retail drug store. (sic) Landlord shall offer such premises to Tenant upon the same terms and conditions as contained in a bona fide offer made by a third party which is acceptable to Landlord. Upon receipt of such offer from Landlord, Tenant shall have thirty (30) days within which to accept said offer and then to enter a written Lease Agreement* * *.

(c) Additional restrictive provisions in Peoples' leases with shopping center developers further control, limit and restrict the types of goods and services which may be offered for sale by other tenants already within a shopping center where Peoples is a tenant.

Typical and illustrative of said restrictive provisions, but not all-inclusive thereof, are the following:

* * * With respect to the area leased to F. W. Woolworth, Landlord shall be required only to obtain a covenant from Woolworth that it will not fill prescriptions.

* * * Penn Fruit Company — shall not trade under the name "drug store" nor fill drug prescriptions in the Camp Hill Shopping Center so long as Peoples Service Drug Stores, Inc. maintains and operates a drug store in the Camp Hill Shopping Center* * *.

(d) The aforesaid restrictions have been enforced or acted upon by respondent and/or others to respondent's benefit.

PAR. 7. The aforesaid lease provisions and the rights, powers and privileges thereby conferred on respondent as set forth in Paragraph Six, have had and continue to have the tendency to restrain trade and commerce. Included among the effects of such restraints are the following:

- (a) Excluding actual and potential competitors;
- (b) Restricting, hindering and coercing shopping center developers in their choice of potential tenants in shopping centers;
- (c) Restricting, hindering and coercing other tenants from selling certain products or offering certain services which are sold or offered by respondent; and
- (d) Denying the public the benefits of free competition.

PAR. 8. In the further course and conduct of its operation of drug stores in shopping centers, respondent has communicated with shopping center developers to effectuate the exclusion of other tenants from shopping centers who sell goods and services also sold by respondent. Respondent has also communicated with shopping center developers to preclude other tenants already doing business in

shopping centers in which respondent also operates a drug store, from selling some of the same goods and services also sold by respondent. Such communications have had and continue to have the tendency to exclude actual and potential competitors, restrict, hinder and coerce shopping center developers in their choice of potential tenants in shopping centers, restrict, hinder and coerce other tenants from selling or offering for sale certain products and services which are sold or offered for sale by respondent and deny the public the benefits of free competition.

PAR. 9. The aforesaid lease provisions, respondent's acts, practices and methods of competition in connection therewith, and the adverse competitive effects resulting therefrom constitute unfair methods of competition in commerce within the intent and meaning 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 with a copy of complaint which the Washington, D.C. Regional Office 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 attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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 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, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Peoples Drug Stores, Inc. 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 Dr., Alexandria, Virginia.

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

ORDER

I

For purposes of this order, the following definitions shall apply:

(a) The terms "respondent" and "Peoples" refer to Peoples Drug Stores, Inc., a corporation, its successors, assigns, subsidiaries, divisions and any other device, their officers, agents, representatives and employees.

(b) The term "shopping center" refers to a group of retail outlets planned, developed and managed as a unit in relation to a trade area which the development is intended to serve, containing 200,000 square feet or more of floor area designed for retail occupancy and providing on-site parking in some definite relationship to the types and sizes of stores in the development.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, whether as lessee or owner of such space.

(d) The term "drugstore" refers to an establishment engaged in the retail sale of prescription drugs and patent medicines and usually is designated by the trade as a drugstore. A drugstore may carry a number of other lines including, cosmetics, toiletries, tobacco and novelty merchandise, and may operate a soda fountain or lunch counter.

(e) The term "rights of first refusal" refers to terms in a lease which provide that respondent shall have the unconditional right to reject or accept the opportunity to operate an additional drugstore in a shopping center where respondent already operates a drugstore.

II

It is ordered, That respondent directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from making, carrying out, or enforcing, directly or indirectly, an agreement or provision of an agreement which:

(1) gives respondent the right to be the only drugstore in a shopping center;

(2) gives respondent "rights of first refusal" in shopping centers;

(3) prohibits or in any manner controls the entrance of tenants into shopping centers;

(4) controls or restricts the business operations of other tenants in shopping centers.

III

It is further ordered, That respondent shall:

A. distribute a copy of this order to each of its operating divisions and subsidiaries;

B. within thirty (30) days after service of this order upon respondent, notify each shopping center developer or landlord of shopping centers in which respondent operates a drugstore of this order by providing each such developer or landlord with a copy of this order by registered or certified mail;

C. within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order; and

D. 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.

IN THE MATTER OF
LINDAL CEDAR HOMES, INC., ET AL.

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

Docket C-2774. Complaint, Jan. 5, 1976—Decision, Jan. 5, 1976

Consent order requiring a Seattle, Wash., manufacturer and seller of pre-cut building packages and distributorships, among other things to cease making advertising claims without prior substantiation; using unfair contract terms; failing to provide consumers with right of rescission if timely delivery of product is not made; failing to provide warranties that their products will be delivered complete and free from defects in accordance with terms of the purchase contract; failing to make disclosures required by F.T.C.'s proposed Trade Regulation Rule on Sale of Franchises; and failing to comply with the disclosure requirements of Regulation Z of the Truth in Lending Act.

Appearances

For the Commission: *David R. Pender.*

For the respondents: *James R. Hermsen, Karr, Tuttle, Koch, Campbell, Mawer & Morrow, Seattle, Wash.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Lindal Cedar Homes, Inc., a corporation, and Sir Walter Lindal, individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and the Truth in Lending Act, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Lindal Cedar Homes, Inc. (hereinafter Lindal, Inc.) is a Washington corporation with its office and principal place of business located at 10411 Empire Way South, Seattle, Washington.

Respondent Sir Walter Lindal was the president and chairman of the board of directors of the corporate respondent and he formulated, directed and controlled the policies, acts and practices of Lindal, Inc., including those hereinafter set forth. He continues to have a substantial ownership interest in the corporate respondent. His address is 3764 S.W. 171st, Seattle, Washington.