

Order

IN THE MATTER OF
P. H. HANES KNITTING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 1134. Order, Nov. 12, 1937

Order modifying Commission's previous modified order of April 7, 1926, in 10 F. T. C. 23, in view of provisions of so-called Miller-Tydings Act (Title VIII of an Act of Congress approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes"), so that said order, directing respondent to cease and desist from resale price maintenance practices as therein set forth, shall not, effective as of August 17, 1937, "prohibit contracts or agreements prescribing minimum prices for the resale of any commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the respondent or other producer or distributeor thereof, and which is in free and open competition with commodities of the same general class produced by others than respondent, when the contract or agreement is lawful as applied to intrastate transactions in the State in which such resale is to be made, or into which the commodity is to be transported for resale, under the laws or public policy of said State."

Before *Mr. John W. Addison*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Mr. H. H. Shelton, of Washington, D. C. and *Manly, Hendren & Womble* and *Mr. T. O. Moore*, of Winston Salem, N. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

On this day there is taken up the petition of the above respondent, entitled "Petition and motion to vacate order to cease and desist," but praying that all orders to cease and desist entered against respondent under the above docket number be either modified or set aside; and,

It appearing that on December 21, 1925, the Commission issued its order that respondent cease and desist from certain business methods and practices therein enumerated; and that on April 7, 1926, said order was superseded by a modified order to cease and desist, modifying said previous order to the extent and in the particulars in said modified order set forth; and,

It also appearing to the Commission that said modified order of April 7, 1926, should be modified in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes."

Order

25 F. T. C.

It is ordered that the modified order to cease and desist issued in this matter on April 7, 1926, be and hereby is modified, as of the date of the approval of the above entitled Act of Congress, to wit, August 17, 1937, by the addition thereto of the following proviso:

Provided, however, That effective August 17, 1937, this order shall not prohibit contracts or agreements prescribing minimum prices for the resale of any commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the respondent or other producer or distributor thereof, and which is in free and open competition with commodities of the same general class produced by others than respondent, when the contract or agreement is lawful as applied to intrastate transactions in the State in which such resale is to be made, or into which the commodity is to be transported for resale, under the laws or public policy of said State.

Syllabus

IN THE MATTER OF
AMERICAN CHARACTER DOLL COMPANY, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2728. Complaint, Feb. 20, 1936—Decision, Nov. 13, 1937*

Where a corporation engaged in manufacture, sale, and distribution of dolls, to purchasers at various points in other States, and chiefly through department stores, toy stores, and mail order houses, in substantial competition with others engaged in manufacture, sale, and distribution, or sale and distribution, of such products in commerce among the various States and in the District of Columbia—

Circularized doll trade with broadside displaying print of picture disclosing results of three weeks' immersion of one of its "paratex" hard rubber dolls, and of composition type doll, to the disadvantage of the latter, which was disclosed as in bad state of disintegration, and to the advantage of former, which showed no ill effects, together with statement that such "Dramatic Test of Paratex Dolls" was made by "buyer of a great retail store" and showed "absolutely no effect from its immersion" "for a Week" to "paratex doll," with "what happened to the other" plain enough, and an invitation to "Make this dramatic test yourself in your own doll department" and assertion that "It will sell Paratex dolls for you Right Now!";

Facts being immersion test in question had been for three weeks and not one, composition dolls can be handled and faces and hands washed or bathed without injury thereto, and said test, by reason of age and intelligence of child-buyers of composition dolls as compared with that of child users of rubber dolls, and other relevant circumstances as to qualities desired in dolls, durability of composition dolls under ordinary and customary use, and actual conditions of ordinary usage and customary treatment, which test failed to portray, did not prove its "paratex" dolls more substantial or desirable or superior to the composition dolls for purposes intended;

With capacity and tendency to mislead and deceive substantial portion of trade and public into erroneous belief that composition dolls were inferior because they would disintegrate if left in water, and with result that public, as consequence of such mistaken and erroneous belief, induced by such false and misleading representations, purchased substantial volume of its said products in preference to those of its competitors, and trade was unfairly diverted to it from competitors likewise engaged in manufacture, sale, and distribution, or in sale and distribution, of dolls without in any way unfairly disparaging products of competitors or misrepresenting their own; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the conditions and circumstances described, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson* and *Mr. John W. Bennett*, trial examiners.