

Syllabus

IN THE MATTER OF
NATIONAL NUMBERING MACHINE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3889. Complaint, Sept. 12, 1939—Decision, Dec. 19, 1939

Where a corporation engaged in manufacture of typographic numbering machines of five-wheel and six-wheel type for stock, and in sale, offer and distribution of such machines to purchasers in commerce among the various States engaged in substantial competition with each other in resale of said machines, and, as engaged as aforesaid in manufacture, sale, etc., of such machines, in active competition with others engaged in manufacture, sale, and distribution in commerce of similar products—

- (a) Discriminated in price between dealer purchasers in active competition with one another in resale of such machines to same prospective purchasers, through selling to certain company 100 machines at net price of \$6 per machine, while selling, at or about same time, 300 machines of like grade and quality at net price of \$5 per machine to dealer competitor, by whom substantial number of such machines, thus purchased by it, were advertised and resold at net price of \$7.50 and \$8.50 for the five-wheel and six-wheel types, respectively; and
- (b) Discriminated in price through selling for resale its machines of like grade and quality in quantities of five or less and at net prices varying from \$6 to \$8 per machine to various other concerns, corporations, individuals, firms, and partnerships competitive the one with the other;

With the result that the effect of such discriminations in price made by it as aforesaid in sale in commerce of its said typographic numbering machines of like grade and quality to purchasers competitive the one with the other, had been and might be—

(1) Substantially to lessen competition with it and with favored purchasers;

(2) To tend to create a monopoly in it and in said favored purchasers in line of commerce in which it and favored customers engaged; and

(3) To injure, destroy or prevent competition in sale and distribution of said typographic numbering machines between it and its competitors, and between said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of same machines not receiving such discriminatory prices:

Held, That said corporation discriminated in price in sale in commerce of its said machines of like grade and quality to purchasers competitive one with the other, in violation of provisions of subsection (a) of section 2 of the Clayton Act, as amended.

Mr. John W. Carter, Jr. for the Commission.

Mr. Irving Fox, of Brooklyn, N. Y., for respondent.

Complaint

30 F. T. C.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption above and hereinafter more particularly described, at various times since June 19, 1936, has violated and is now violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, National Numbering Machine Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business at 1 Beekman Street, New York, N. Y. Said respondent was incorporated in 1936 and from that time up to June 1938, manufactured special made-to-order typographic numbering machines. Thereafter respondent commenced the production of typographic numbering machines for stock. Respondent sells and distributes such machines in commerce between and among the various States of the United States causing said machines to be shipped and transported from their place of manufacture in New York, N. Y., to purchasers thereof located in the various States of the United States.

PAR. 2. For more than 25 years prior to June 1938, typographic numbering machines were manufactured, sold, and distributed in the United States by 4 producers, all located in New York City. Two of such producers sell and distribute their machines at list prices of \$12 per machine for the 5-wheel type and \$14 per machine for the 6-wheel type. The other 2 sell and distribute their machines at list prices of \$13 for the 5-wheel type and \$15 for the 6-wheel type. All of said machines are sold and distributed to dealers at a functional discount of 33½ percent from list price and are sold and distributed to users at a discount from list price of 5 percent on purchases of 6 to 11 machines, 10 percent on purchases of 12 to 24 machines, 15 percent on purchases of 25 to 49 machines, and 20 percent on purchases of 50 machines or more.

PAR. 3. In June 1938, respondent began the manufacture, sale, and distribution of stock typographic numbering machines at list prices of \$13 for the 5-wheel type and \$15 for the 6-wheel type per machine. Several months after June 1938, however, respondent in an effort to compete more effectively with the better-known machines of its older and better established competitors reduced its list prices thereon to \$11 for the 5-wheel type and \$13 for the 6-wheel type and offered discounts to the trade generally from said list prices of 35 percent on purchases of 6 to 12 machines, 40 percent on pur-

chases of 12 to 25 machines, 40 percent plus 5 percent on purchases of 25 to 100 machines and special discounts on purchases of 100 machines or more.

PAR. 4. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing typographic numbering machines in commerce between and among the various States of the United States.

PAR. 5. In the course and conduct of its business as above described, respondent has discriminated in price and is now discriminating in price between different purchasers buying typographical numbering machines of like grade and quality for resale to dealers and users by giving and allowing to some of its purchasers of said machines lower prices than those given or allowed to other of its purchasers competitively engaged one with the other in the resale of the said machines to dealers and ultimate users within the United States. Respondent, since June 1938, sold 300 of said machines of both the 5- and 6-wheel type to the Craftsmen Machinery Co. of Boston, Mass., at a net price of \$5 per machine and at or about the same time has sold 100 machines of like grade and quality to the American Wood Type Manufacturing Co. of New York City at a net price of \$6 per machine, both of which concerns are dealers in said machines and are in active competition one with the other for the resale of said machines to the same prospective purchasers. The Craftsmen Machinery Co. has advertised and resold a substantial number of the machines so purchased at unit prices of \$7.50 for the 5-wheel type and \$8.50 for the 6-wheel type. The respondent has likewise, since June 1938, sold for resale machines of like grade and quality in quantities of 5 or less to various other concerns, corporations, individuals, firms, and partnerships at net prices varying from \$6 to \$8 per machine.

PAR. 6. The general effect of said discriminations in price made by said respondent as above set out has been and may be substantially to lessen competition with respondent and with the favored purchasers; to tend to create a monopoly in respondent and in said favored purchasers in the line of commerce in which said respondent and said favored purchasers are engaged; to injure, destroy, or prevent competition in the sale and distribution of said typographic numbering machines between respondent and its competitors and between the said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of the same machines not receiving said discriminatory prices.

Findings

30 F. T. C.

PAR. 7. The foregoing alleged acts of said respondent are in violation of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (The Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, sec. 13), the Federal Trade Commission on the 12th day of September 1939, issued and thereafter served its complaint in this proceeding upon the respondent, National Numbering Machine Co., Inc., a corporation, charging it, the aforesaid corporation, with violating the provisions of section 2 of the Clayton Act as amended, by the Robinson-Patman Anti-discrimination Act approved June 19, 1936, (U. S. C. title 15, sec. 13).

After the issuance and service of the said complaint, the said respondent, National Numbering Machine Co., Inc., by its attorney Irvin Fox, filed a request with the Commission seeking an extension of time within which to file the answer of respondent. By an order entered on the 28th day of October 1939, the Commission extended such time from October 3, 1939, to October 30, 1939. On October 4, 1939, the said respondent, National Numbering Machine Co., Inc., by its attorney Irvin Fox, filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to the said facts.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint filed and served as aforesaid, the motion to extend time for filing answer, the order extending said time, the answer of respondent admitting all the material allegations of fact in said complaint, the waiver, by the respondent, of all intervening procedure and further hearing, and the Commission now having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and from these facts draws the conclusion hereinafter set out.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Numbering Machine Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 1 Beekman Street, in the city of New York, N. Y., and until June 1938, was en-

gaged in the manufacture of special made-to-order typographic numbering machines.

Since June 1938, the said respondent has been, and now is, engaged in the city of New York in the manufacturing of typographic numbering machines of the five-wheel and six-wheel type for stock, and in the sale, offering for sale, selling, and distribution of such machines to purchasers in commerce between and among the various States of the United States. In the course of its business respondent causes said machines when sold, to be shipped and transported from its principal place of business in the State of New York to purchasers thereof in the State of New York and in the various States of the United States.

In so carrying on its business as aforesaid, respondent has been, and now is, engaged in active competition with other corporations, individuals, partnerships, and firms engaged in the manufacture of typographic numbering machines and in the sale and distribution thereof in commerce between and among the various States of the United States; and the purchasers of said machines manufactured and sold by respondent as aforesaid, in the course of their business in reselling said machines, have been for several years last past, and are now, in substantial competition with each other.

PAR. 2. The Craftsman Machinery Co. of Boston, Mass., and the American Woodtype Manufacturing Co. of New York City are dealers in typographic numbering machines and are in active competition one with the other in the resale of such machines to the same prospective purchasers. Respondent sold to American Woodtype Manufacturing Co. of New York City 100 machines at a net price of \$6 per machine, and at or about the same time sold to the Craftsman Machinery Co. of Boston, Mass., 300 machines of like grade and quality at a net price of \$5 per machine. The Craftsman Machinery Co. of Boston, Mass., advertised and has resold a substantial number of the machines, purchased as aforesaid, to users at a net price of \$7.50 and \$8.50 for the 5-wheel and 6-wheel type respectively.

The respondent has likewise since June 1938, sold for resale its machines of like grade and quality, in quantities of five or less, to various other concerns, corporations, individuals, firms, and partnerships, competitive the one with the other, at net prices varying from \$6.00 to \$8.00 per machine.

The different prices as found and set out herein amount to, and are, discriminations in price in commerce between purchasers of respondent's typographic numbering machines.

Order

30 F. T. C.

PAR. 3. The Commission finds that the discriminations in price made by respondent, as aforesaid, in the sale in commerce of its typographic numbering machines of like grade and quality to purchasers competitive the one with the other, has been, and may be,

(a) Substantially to lessen competition with respondent and with the favored purchasers.

(b) To tend to create a monopoly in respondent and in said favored purchasers in the line of commerce in which said respondent and in which favored customers engage.

(c) To injure, destroy or prevent competition in the sale and distribution of said typographic numbering machines between respondent and its competitors and between said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of the same machines not receiving such discriminatory prices.

CONCLUSION

The Commission therefore concludes that the respondent, National Numbering Machine Co., Inc., has discriminated in price in the sale in commerce of its typographic numbering machines of like grade and quality to purchasers, competitive one with the other, as hereinabove set out, in violation of the provisions of subsection (a) Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, (U. S. C. title 15, sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer filed by respondent, National Numbering Machine Co., Inc., admitting the material allegations of fact in the complaint to be true, and waiving all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and its conclusion drawn therefrom, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936, (U. S. C. title 15, sec. 13).

It is ordered, That respondent, National Numbering Machine Co., Inc., and its successors, together with its respective officers, directors, representatives, agents, and employees, in the sale of respondent's typographic numbering machines of like grade and quality sold for

use, consumption, or resale within the United States, do forthwith cease and desist from:

(a) Discriminating in price, either directly or indirectly, between the Craftsman Machinery Co. and the American Woodtype Manufacturing Co., and, where either or any of the sales are in interstate commerce, between other purchasers competitively engaged one with the other in the resale of such machines, by selling such typographic numbering machines to such customers at the different prices set forth in paragraph 2 of the aforesaid findings as to the facts and conclusion.

(b) Discriminating in price, where either or any of the sales are in interstate commerce, between different purchasers competitively engaged in the resale of its typographic numbering machines by means of price differences substantially similar to the price differences set forth in paragraph 2 of the aforesaid findings as to the facts and conclusion unless the differences between the prices paid by such purchasers make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such machines are to such purchasers sold or delivered.

It is further ordered, That the respondent, the National Numbering Machine Co., Inc., a corporation, shall, within 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 the order to cease and desist hereinabove set forth.

Modified Order

30 F. T. C.

IN THE MATTER OF

W. H. SNYDER, R. P. SNYDER AND ROGER N. SNYDER,
DOING BUSINESS AS W. H. SNYDER & SONS

MODIFIED CEASE AND DESIST ORDER

Docket 1441. Order, Dec. 20, 1939

Order, in response to motion, modifying cease and desist order of March 3, 1932, 16 F. T. C. 59, so as to require respondents, their agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on island of Cuba, as in said order set forth.

Mr. Marshall Morgan for the Commission.

MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist as entered herein on March 3, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondents, and it further appearing that respondents herein have not been engaged in the manufacture of cigars under the brand names "Havana Fruit" and "Havana Velvet," respectively, since the year 1933, and that said respondents have no intention of resuming the manufacture and sale of cigars under such brand names, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises.

It is ordered, That the motion to modify the order to cease and desist issued herein on March 3, 1932, be, and the same hereby is, granted in all respects except for the period of time within which said respondents are directed to file a report of compliance with the terms of this order.

It is further ordered, That the order to cease and desist issued herein on March 3, 1932, be, and the same hereby is, modified so as to read as follows:

This proceeding having been heard by the Federal Trade Commission upon the entire record, including the complaint of the Commission, and the answer of the respondents thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts and its conclusion that said respond-