

IN THE MATTER OF
ACME STEEL COMPANY

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3818. Complaint, June 14, 1939—Decision, Aug. 20, 1941

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—FIELDS OF COMPETITION—IF MODERN AND SPECIALIZED SERVICE FRACTIONAL PART ONLY OF OLDER GENERAL FIELD—WHETHER SUBSTANTIAL COMPETITIVE EFFECT POSSIBLE.

As respects a contention that metal tying machines constitute such a small part of the entire tying field that the practice of the leading tying-machine concerns can have no substantial effect upon competition in that field, it is to be noted that most of the devices and methods used for tying purposes—such as rope, twine, gummed tape, etc., tools for metal reinforcing such as pliers, nippers, twisting bars, and hammer and nails, and including also prefabricated containers which either do not need reinforcing or are reinforced in the process of manufacture—are of a more or less primitive or out-moded nature and, in many instances, are being supplanted by modern tying machines, such as those made by the instant concern and others. The very existence of the tying-machine industry, in fact, depends upon its ability to convince shippers that the tying machine is an improvement over such other methods. That it has been able to make substantial inroads into the tying field to supplant the more primitive methods in many instances is attested by its steady and rapid growth.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—WHETHER "LINE OF COMMERCE"—TYING MACHINES.

The tying-machine industry constitutes a field distinct from the general tying field, and is a line of commerce within the meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—RESTRICTIVE CONDITIONS—IF PRACTICAL EFFECT TO PRECLUDE LESSEES' USE OF SUPPLIES, ETC., OF LESSOR'S COMPETITOR.

While the form of a lease contract used by lessor company in leasing its metal tying machines, providing that no wire other than that supplied by the company should be used in the operation of the machine and that, in the event of a breach of said condition, lessee's right to possess or use a machine should terminate forthwith, did not expressly provide that lessees of its machines and appliances should not use the wire of its competitors, the practical effect of said condition was to preclude such lessees from using competitors' wire.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—LEASE OF MACHINES PERFORMING MODERN SPECIALIZED SERVICES IN ORDER GENERAL FIELD ON CONDITIONS PRECLUDING USE OF COMPETITORS' SUPPLIES.

Where a corporation engaged in manufacturing tying tools, machines, and appliances and the steel straps and bands used in operation thereof, and in the

Complaint

interstate sale and distribution of its steel strapping and in leasing such tools and machines to lessees in other States for revenues which were of minor importance compared with those received from the sale of the strapping, which constituted the primary purpose of such leasing; doing from 20 to 30 percent of the business in the industry and, along with 2 other companies out of some 12 in the United States, controlling from 20 to 30 percent of the total volume of business, and, like said 2, leasing its machines only—

Leased its said machines upon the condition that no steel strapping other than that purchased from it should be used therewith, and that, in the event of a breach of such condition, right of lessee to possession might be terminated and such equipment be repossessed by it, and thereby excluded from the market numerous parties who, in the absence of such restriction, would be potential purchasers of tying wire from its competitors, and restricted competition in the tying-wire market in direct proportion to the extent to which it was successful in leasing its machines under such restrictive agreements; With the result that the effect of such restrictive condition, under the circumstances set forth, materially increased as a part of the cumulative effect upon competition of the practices of said three leading companies, might be to substantially lessen competition in line of commerce concerned:

Held, That such acts and practices described constituted violations of Section 3 of the Clayton Act.

Mr. George W. Williams for the Commission.

Davis, Lindsey, Smith & Shonts, of Chicago, Ill., and *Mr. Francis D. Thomas*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the Acme Steel Co., a corporation, hereinafter referred to as respondent, has violated the provisions of section 3 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act, hereby issues this its complaint against said respondent and states its charges in respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Acme Steel Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at 2840 Archer Avenue, city of Chicago, State of Illinois, and branch offices and warehouses located in Brooklyn, State of New York, Atlanta, State of Georgia, Los Angeles and San Francisco, State of California, and Seattle, State of Washington.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing steel strap and band-tying tools, machines, and equipment, and the steel straps, bands, and seals used in the operation thereof, and in the business of leasing, and licensing

Complaint

33 F. T. C.

the use of, said tools, machines, and equipment, and in selling and supplying of the steel straps, bands, and seals used in the operation of said tools and machines. Said tools, machines, and equipment and said steel straps, bands, and seals, are used by lessees, licensees, and vendees in the tying or binding of boxes, packages, and bundles. In connection with the making of such leasing and license agreements, respondent has caused, and still causes, said tools, machines, and equipment, when leased or licensed, and said straps, bands, and seals, when sold, to be transported from its principal place of business or its branch plant at Riverdale, Ill., to the aforesaid licensees, lessees and vendees, located at various points in the several States of the United States and in the District of Columbia, and there is now, and has been for more than 3 years last past, a constant current of trade and commerce in said products between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

In the course and conduct of its business, said respondent has been, in the last several years, in competition with firms, partnerships, corporations, and individuals engaged in the selling, leasing, and licensing of steel strap tying tools, machines, and equipment and the selling of steel straps, bands, and seals used in the operation thereof, as aforesaid, in commerce between and among the various States of the United States, the Territories thereof, and in the District of Columbia.

Said respondent is now, and has been for several years last past, the largest manufacturer and distributor of said steel strap and band tying tools, machines, and equipment and the straps, bands, and seals used in connection therewith, in the United States, and now occupies a dominant position in said industry, and is the largest in the whole tying-tool, machine, and equipment and tying supply business in the United States.

Respondent manufactures two types of tying machinery; one being known as hand-tying tools and the other as unit-loading tool equipment, the former being used in connection with the tying of ordinary bundles, packages, and boxes, and the latter principally in connection with the tying of bundles for loading on railroad cars and the like.

PAR. 2. Respondent, in the course and conduct of its said business, hereinabove described in paragraph 1, has, during the last several years, leased, and licensed the use of, its said tools, machines, and equipment for use in the several States and Territories of the United States, and the District of Columbia, on the condition, agreement, or understanding that the lessees or licensees or other users thereof will use with the said tools, machinery, and equipment only strapping

1062

Findings

and seals purchased from respondent, reserving the right to terminate the lease at any time; and has, during the last several years, leased, or licensed the use of, its said unit-load tool equipment on the condition, agreement or understanding that the lessees or licensees or other users thereof will purchase their entire requirements of bands and seals for use in the operation thereof from respondent as long as they are in the possession of said lessees and licensees and on the further condition, agreement, or understanding that if such lessees or licensees should use any such material in the operation of any of said machines and equipment other than that purchased from or supplied by respondent, the right to the use and possession of such machines and equipment may be terminated and that such machines and equipment may be immediately repossessed by respondent.

PAR. 3. The effect of said leases and licenses, entered into on the said condition, agreement, or understanding set forth in paragraph 2 hereof, may be to substantially lessen competition in commerce in the leasing and selling of said hand-tying and unit-loading tools and equipment and the sale of said supplies and tying material hereinabove described, namely, straps, bands, and seals, between respondent and said competitors, or tend to create a monopoly in respondent, in commerce, between and among the various States of the United States, and the District of Columbia, in said products.

PAR. 4. The aforesaid acts, practices, and methods of respondent constitute a violation of the provisions of section 3 of the hereinbefore mentioned act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, the Federal Trade Commission on June 14, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Acme Steel Co., a corporation, charging it with the violation of the provisions of section 3 of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and Glen E. Smith and Messrs. Davis, Lindsey, and Shonts, attorneys for the respondent, which provided, among other things, that a certain statement of facts stipulated to in the

Findings

33 F. T. C.

Commission's proceeding against Signode Steel Strapping Co. (Docket No. 3688) may be made a part of the record herein and may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which may be drawn from said stipulated facts), and its conclusion based thereon, the parties reserving, however, the right to file briefs and present oral argument in said Signode case, Docket No. 3688. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation (no brief having been filed by the attorneys for the respondent and no oral argument having been made by such attorneys); and the Commission having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Acme Steel Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2840 Archer Avenue, Chicago, Ill. Respondent also maintains branch offices and warehouses located in Brooklyn, N. Y.; Atlanta, Ga.; Los Angeles, Calif.; San Francisco, Calif.; and Seattle, Wash.

Respondent is now, and for many years last past has been, engaged in the business of manufacturing tying tools, machines, and appliances and the steel straps and bands used in the operation thereof, and in the business of leasing such tools, machines, and appliances, and in the selling of the steel straps and bands used in the operation thereof. Said tools, machines, and appliances and said steel straps and bands, commonly called steel strapping, are used in the tying or binding of boxes, packages, and bundles.

PAR. 2. In the course and conduct of its business the respondent causes, and for many years last past has caused, its said tools, machines, and appliances, when leased, and its said steel strapping, when sold, to be transported from its principal place of business in Chicago, Ill., or from its branch plant located at Riverdale, Ill., or from its branch offices and warehouses located in the States of New York, Georgia, California, and Washington, to the aforesaid lessees and vendees located in various States of the United States other than the States in which such shipments originate, and in

the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. There are in the United States other corporations, and individuals, firms, and partnerships, who have been and are engaged in the sale, in commerce among and between the various States of the United States and in the District of Columbia, of steel strapping suitable for use in and with respondent's machines, appliances, and tools. But for the restrictive conditions in respondent's lease contracts, as hereinafter set forth, respondent would have been and would now be in active and substantial competition with such corporations, individuals, firms, and partnerships in the sale of steel strapping to the lessees of respondent's machines, appliances and tools.

PAR. 4. Tying machines and appliances are divided into two general classes, those which use or are used with flat strips or bands of steel, and those which use or are used with steel wire. The general purpose of the machines and appliances, whether used separately or in combinations, is the tying or reinforcing of boxes, bales, bundles, etc., so that such containers and their contents may be transported or stored more efficiently and with greater safety and satisfaction. Essentially, the machines perform two operations: First, the tightening or tensioning of the wire or strapping around the bundle, and second, the tying or fastening of the wire or strapping.

PAR. 5. Respondent does not sell any of its machines or appliances but supplies such machines and appliances to users thereof under certain lease agreements. All of such leases include (or until recently did include) conditions or agreements prohibiting the lessee from using in or with such machines and appliances any steel strapping other than that purchased from respondent. Such leases further provide that if such lessees should use in the operation of respondent's machines and appliances any material other than that purchased from respondent, the right of the lessee to the possession of the machine or appliance may be terminated and that such equipment may be repossessed by respondent.

PAR. 6. There are some 12 companies in the United States engaged in the sale or leasing of tying machines and appliances, and the gross volume of business done by the industry, including the sale of wire and strapping, amounts to approximately \$9,000,000 annually. Some two-thirds to three-fourths of the business, however, is confined

to 3 companies, these being the respondent, the Signode Steel Strapping Co. (respondent in the Commission's proceeding under Docket No. 3688), and The Gerrard Co., Inc. (respondent in the Commission's proceeding under Docket No. 3498). Respondent and the Signode Co. each do some 20 to 30 percent of the total volume of business in the industry, and the Gerrard Co. does some 10 to 20 percent of the total volume. A fourth company does approximately the same amount of business as the Gerrard Co.

Like the respondent, the Signode and Gerrard companies lease their machines and do not sell them outright. The lease agreements used by both of these companies contain conditions prohibiting the lessee from using in the machine any strapping or wire other than that supplied to the lessee by the company furnishing the machine.

PAR. 7. The revenue received by respondent from the leasing of its machines and appliances is of minor importance as compared with the revenue received by it from the sale of its steel strapping. The primary purpose of leasing the machines and appliances is to enable respondent to sell the steel strapping used in or with the equipment.

PAR. 8. There is on the market an ample supply of steel strapping suitable for use in or with respondent's machines and appliances, such strapping being for sale both by concerns which sell or lease tying machines and by concerns which do not sell or lease such machines. These concerns are prepared to and have attempted to sell such strapping to lessees of respondent's machines and appliances, but have found themselves precluded from such sale by reason of the restrictive conditions in respondent's lease contracts.

PAR. 9. The Commission finds that the practice of respondent in requiring that the lessees of its machines and appliances use in or with such machines and appliances no strapping other than that supplied by respondent, results in the exclusion from the market of numerous parties who, in the absence of such restrictions, would be prospective and potential purchasers of strapping from respondent's competitors. Competition in the strapping market is restricted and contracted in direct proportion to the extent to which respondent is successful in leasing its machines and appliances under agreements containing such restrictive conditions.

PAR. 10. There are many ways of preparing boxes, bundles, and packages for shipment, and there are also many devices and tools used by shippers for this purpose. Rope, twine, gummed tape, etc., are used in many cases, and where metal reinforcement is desired there are many devices and tools which may be and are used in doing

the work, such as pliers, nippers, buckles, wire twisters, and hammer and nails. Many shippers also use specially made boxes, containers, barrels, etc., which either do not need additional reinforcement or are reinforced during the process of manufacture. It is contended by the respondent that metal tying machines and appliances constitute such a small part of the entire tying field that the practices of respondent and the other leading tying-machine companies can have no substantial effect upon competition in the tying field.

PAR. 11. Most of the devices and methods referred to, however, are of a more or less primitive or out-moded nature, and in many cases are being supplanted by modern tying machines such as those manufactured by respondent and the other tying-machine concerns. In fact, the very existence of the tying-machine industry depends upon its ability to convince shippers that the tying machine is an improvement over these other methods. That the industry has been able to make substantial inroads into the tying field and to supplant the more primitive methods in many instances is attested by the substantial volume of business done by respondent and by the tying machine industry as a whole.

PAR. 12. The Commission is of the opinion from the evidence, and finds that the tying-machine industry constitutes a field distinct from the general tying field, and that it is a line of commerce within the meaning of the Clayton Act.

PAR. 13 While the restrictive conditions in respondent's contracts do not expressly provide that the lessees of respondent's machines, appliances, and tools shall not use the strapping of respondent's competitors, the practical effect of such conditions is to preclude such lessees from using such strapping. The Commission further finds that the effect of such restrictive conditions, under the circumstances set forth herein, has been, is, and may be, to substantially lessen competition in the aforesaid line of commerce. Such effect is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying-machine industry upon competition in said line of commerce.

CONCLUSION

Through the use of the acts and practices described herein the respondent has violated and is now violating section 3 of the act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into between the respondent and W. T. Kelley, chief counsel for the Commission, which provided, among other things, that a certain statement of facts stipulated to in the Commission's proceeding against Signode Steel Strapping Co. (Docket No. 3688), may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of that certain act of the Congress of the United States entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act.

It is ordered, That the respondent, Acme Steel Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the leasing, sale, or making of any contract for the sale, of respondent's machines, appliances, and tools in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Leasing, selling, or making any contract for the sale of, respondent's machines, appliances, or tools on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use in or with such machines, appliances, or tools any strapping other than that acquired from respondent, or from any other source designated by respondent.

2. Enforcing, or continuing in operation or effect, any condition, agreement, or understanding in or in connection with any existing lease or sale contract, which condition, agreement, or understanding is to the effect that the lessee or purchaser of respondent's machines, appliances, or tools shall not use in or with such machines, appliances, or tools any strapping other than that acquired from respondent.

It is further ordered, That said respondent 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 this order.

¹ Order published as modified as of October 29, 1941.

Syllabus

IN THE MATTER

ORA R. YATES AND CHARLES W. MILLER, TRADING AS
MONARCH PRINTERS AND BINDERS

MONARCH PRINTERS & BINDERS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4339. Complaint, Oct. 9, 1940—Decision, Aug. 20, 1941*

Where two individuals engaged in competitive interstate sale and distribution of sales promotion cards so designed and arranged as to involve the use of games of chance, gift enterprises, or lottery schemes when used by dealers in promoting and increasing sales of their merchandise to consuming public, typical one involving plan, as explained on card, under which customer or dealer using such cards was entitled to a "Treasure Chest receipt" with each 25 cents spent, and had the option, upon the pasting of such receipts on the 100 spaces provided on the card, of receiving cash redemption value of 15 cents or of exchanging the card for articles of merchandise or cash awards varying from 50 cents to \$5 called for by legend under card's seal—

- (a) Sold such cards to wholesalers and jobbers and, directly and indirectly, to retailers, who distributed them to customers and honored awards as shown when seals were broken, in accordance with above plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who, unwilling to offer or sell cards or devices so designed and arranged as to involve a game of chance, gift enterprise, or lottery scheme, refrain therefrom;

With the result that the consuming public was induced to purchase merchandise from dealers using their cards in preference to those using devices of their competitors, because of said game of chance, and dealers were consequently induced to purchase their said cards in preference to devices of their competitors, and with effect of unfairly diverting trade in commerce to them from their said competitors, to the injury of competition in commerce; and

- (b) Represented that they were printers and binders of their said merchandise, owning, operating, and controlling the plant in which it was printed and bound, through using words "Printers and Binders" in their trade name set forth on display cards, letterheads, said sales-promotion cards and other printed matter which they caused to be distributed;

When, in fact, they filled orders with merchandise which was printed and bound in a plant which they did not own, operate, or control, and were not printers and binders, preferentially dealt with by substantial portion of the consuming public and dealers as affording, in their belief, lower prices, elimination of middlemen's profits, superior products, and other advantages;

With tendency and capacity to mislead and deceive prospective purchasers into the belief that they were the printers and binders of their merchandise, and to cause them to buy their said articles because of such mistaken and erroneous belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and consti-