

IN THE MATTER OF
SCIENTIFIC APPARATUS MAKERS OF AMERICA, ET AL.

MODIFIED ORDER TO CEASE AND DESIST

Docket 3092. Order, June 23, 1945

Order, pursuant to provisions of Section 5 (b) of the Federal Trade Commission Act, in proceeding in question; in which (1) the original order issued on August 25, 1941, 33 F. T. C. 1130; (2) the Circuit Court of Appeals for the Seventh Circuit, on February 29, 1944, in *Eugene Dietzgen Co. et al. v. Federal Trade Commission*, 142 F. (2d) 321, rendered its opinion, and on May 3, 1944 modified the same, on denial of rehearing, and on May 22, 1944 entered four separate decrees by which the Commission's said order to cease and desist was, with respect to said petitioning respondents only, modified, affirmed, and enforced; (3) the Commission on March 2, 1945¹ (a) modified original order of August 25, 1941, pursuant to said four court decrees and as to the respondents therein named only by requiring (A) said respondents, their officers, etc., to cease and desist from entering into or carrying out any understanding, etc., to restrict, restrain, monopolize, hinder or suppress competition in the sale and distribution in commerce of prepared tracing papers, tracing cloths, drawing tools, and various other articles used by surveyors, engineers, builders, the drafting profession and others, *by doing any of the acts or things therein specified; and from doing any of such acts or things pursuant to any such understanding, etc.*; including among said acts, etc., thus prohibited, the fixing and maintaining of prices and terms and conditions of sale, and the exchanging of information among themselves with respect to prices, etc.; and (B) respondent association, the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, its manager, etc., to cease and desist from aiding and assisting the members of respondent association in carrying out or engaging in any of the acts and practices theretofore set forth; and particularly through adopting rules and regulations designed to prevent price deviations and through receiving and disseminating price lists; (b) as in original order, dismissed the complaint as to respondent Scientific Apparatus Makers of America and certain others named, for insufficient evidence—

Similarly modifying said original order, under the provisions of Section 5 (b) of the Federal Trade Commission Act as to the other respondents joined therein; dismissing the complaint, as before, as to said Scientific Apparatus Makers of America, etc.; and excusing respondents, upon whom instant modified order is served, from the filing within sixty days of new compliance reports.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, the testimony and other evidence taken before duly appointed trial examiners of the Commission theretofore designated by it to serve in this proceeding, the report of the trial examiner thereon and the exceptions to said report, briefs filed herein by the attorney for the Commission and attorneys for the respondents, and the oral arguments by the respective attorneys, and the Commission having made its findings as to the facts and its conclusion

¹ See *ante*, p. 169.

that respondents had violated the provisions of the Federal Trade Commission Act, and having entered an order to cease and desist herein on August 25, 1941; and,

Thereafter, the respondents (1) Keuffel & Esser Company and Karl Keller; (2) Charles Bruning Company, Inc., The Frederick Post Company, Chas. W. Speidel & Company, J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; (3) The C. F. Pease Company; and (4) Eugene Dietzgen Company, filed in the United States Circuit Court of Appeals for the Seventh Circuit their four separate petitions for a review of the Commission's said order to cease and desist entered on August 25, 1941. Thereafter, the Circuit Court of Appeals for the Seventh Circuit entered four separate decrees by which the Commission's said order to cease and desist entered on August 25, 1941, was, with respect to the petitioning respondents only, modified, affirmed and enforced; and

It appearing to the Commission that, of the respondents who filed their petitions for review of the Commission's said order to cease and desist with the Circuit Court of Appeals for the Seventh Circuit, only one of said respondents, namely, Eugene Dietzgen Company, filed a petition for certiorari, which said petition was denied by the Supreme Court of the United States on October 9, 1944, and that the time for filing petitions for certiorari as to the remaining said petitions expired on August 22, 1944; and

Thereafter, on March 2, 1945, the Commission having entered its order modifying its order to cease and desist entered on August 25, 1941, with respect to the petitioning respondents only so as to conform to the decrees entered by the United States Circuit Court of Appeals for the Seventh Circuit; and thereafter on motion of the attorney for the Federal Trade Commission, the Commission, on May 10, 1945, having entered an order directing that a copy of said motion be served upon said respondents and requiring said respondents within twenty days after service upon them of said motion to show cause, if any they could, in writing, why said order to cease and desist heretofore entered herein on August 25, 1941, should not be so modified in accordance with said motion so as to correspond with the language used by the Federal Trade Commission in its order of March 2, 1945, modifying the order to cease and desist heretofore entered on August 25, 1941, as to the respondents, Keuffel & Esser Company and Karl L. Keller; Charles Bruning Company, Inc., The Frederick Post Company, Charles W. Speidel and Walter A. Kohn, trading as Chas. W. Speidel & Company, Jacob H. Weil, Edwin H. Weil and Manfred R. Krauskopf trading as J. H. Weil & Company, Paul J. Bruning, W. A. Berger, Arthur L. Parker; and the Charles Bruning Company, Inc., The Frederick Post Company, and J. H. Weil & Company, as members of the Scientific Apparatus Makers of America, a corporate association; The C. F. Pease Company; and Eugene Dietzgen Company only, as to all of said respondents, and, thereafter, the said period of twenty days within which said respondents were directed to show cause why said order should not be so modified in accordance with said motion having expired; now, therefore,

It is ordered, That in accordance with the provisions of Section 5 (b) of the Federal Trade Commission Act, due notice having been served on said respondents, this matter be, and the same hereby is, reopened for the purpose only of modifying the order to cease and desist heretofore entered herein on August 25, 1941.

It is further ordered, That the respondents, Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America, an association, and its officers; R. Fred Allin, individually and as a member of the Executive Committee of the Surveying-Drafting-Coaters Section of the Scientific Apparatus Makers of America; and The Huey Company, a corporation, Economy Blue Print Products, Inc., Alphonse A. Brunner, trading as Keystone Blue Paper Company, and United States Blue Print Paper Company, a corporation, all separately and as members and representatives of Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, a corporate association, and their officers, directors, representatives, agents and employees forthwith cease and desist from:

Directly or indirectly, jointly or severally, entering into or carrying out any understanding, agreement, arrangement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to restrict, restrain, monopolize, or to hinder or suppress, competition in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of prepared tracing papers, tracing cloths, blueprint papers and cloths, other reproduction papers and cloths, profile and cross section papers and cloths in sheets and rolls, coordinate papers—graph sheets (except rolled sheets) for engineering and drafting purposes, field books for engineers, drawing instruments, drawing tools (scales, triangles, T-squares, curves), drawing machines, blueprinting machines and equipment, drawing boards and tables, filing cabinets for drawings and blueprints, lettering devices and lettering pens for the drafting profession; slide rules, planimeters and integrators, surveying instruments, surveying barometers, forestry instruments such as tree calipers, hypsometers, increment borers, current meters and water-stage registers, rods and poles for surveyors' use, tapes, chains and plumb bobs, *by doing any of the following acts or things, and from doing any of the following acts or things pursuant to any such understanding, agreement, arrangement, combination or conspiracy:*

1. Fixing and maintaining, or agreeing to fix and maintain the prices at which said products will be sold by them.

2. Fixing and maintaining, or agreeing to fix and maintain the terms and conditions, including the classification of customers, freight allowances and duration of and optional clauses in contracts, in connection with any sales by them of their said products.

3. Exchanging information among themselves with regard to the prices, discounts, terms and conditions of sale to be submitted by them when bids for their products are requested, and submitting or agreeing to submit identical or substantially identical, bids on said products when requests for bids have been received.

4. Filing with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, price lists including discounts, terms and conditions at which they will sell their products, for dissemination by said respondent Association among its members.

5. Agreeing not to sell their said products at a price less, or a discount greater, or on terms and conditions more favorable to the purchaser than those contained in any of the price lists filed with respondent Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, or agreeing not to sell said products at a price less or discount greater than or on terms and conditions of sale more favorable to the purchaser than those contained in the price list published by the seller.

It is further ordered, That respondent association, Surveying-Drafting-Coaters Section of Scientific Apparatus Makers of America, Arthur L. Parker, its manager and his successors, Karl Keller, Paul J. Bruning, R. Fred Allin, and W. A. Berger, members of its executive committee and their successors, forthwith cease and desist from, directly or indirectly, jointly or severally, aiding and assisting the members of said respondent association in carrying out or engaging in any of the acts and practices hereinbefore set forth, and from performing any service or function in the furtherance of said acts and practices, and particularly from—

1. Adopting any rule or regulation designed or intended to prevent any deviation on the part of the members of said respondent Association from the prices, discounts and terms fixed and agreed upon by them, as hereinbefore set forth.

2. Receiving from the individual members of said respondent association price lists, including discounts, terms and conditions of sale, and disseminating such information among said respondent association members.

It is further ordered, That the complaint herein be and the same hereby is dismissed as to respondents, Scientific Apparatus Makers of America, its officers and directors, and respondents, Carl S. Hallauer, R. E. Gillmor and John M. Roberts, the evidence being insufficient to establish the charges of the complaint with respect to these respondents.

It is further ordered, That the respondents upon whom this modified order is served are excused from the filing within (60) days of any new compliance reports, in view of the fact that they have previously filed reports of compliance with the broader form of order originally entered in the case on August 25, 1941.

IN THE MATTER OF
AUTOMATIC ELECTRICAL DEVICES CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4741. Complaint, Mar. 31, 1942—Decision, June 29, 1945

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Homozone" devices, designed to generate ozone by the passage of an electrical current through air and to disseminate it through the rooms or enclosures in which the devices were placed, or through water—

- (a) Represented, directly or by implication, through advertisements in circulars, leaflets, pamphlets and other advertising literature, that use of its said devices would give relief to persons afflicted with many ailments, including diseases of the respiratory system, such as asthma, bronchitis and hay fever, sinus trouble and heart ailments; and would avert colds and headaches, destroy bacteria, lessen or avert fatigue, and promote and improve the general health;

The facts being use of said devices produced no beneficial therapeutic consequences; they did not produce, under ordinary conditions of use, a concentration of ozone in the atmosphere sufficient to destroy bacteria, and such a concentration would be extremely dangerous, and even fatal, to humans;

- (b) Represented, falsely, as aforesaid, that use of said devices in connection with poultry would reduce deaths, avert disease and the effects thereof, prevent the spread of infection and infectious diseases, relieve respiratory ailments, cure "Roup," and disinfect places where poultry was kept; and that in connection with animals it was of value in the treatment of respiratory diseases;

The facts being, as noted above, that the device would not produce an ozone concentration in the atmosphere, under ordinary conditions of use, sufficient to have any significant effect upon the organisms of infectious diseases;

- (c) Represented, directly or by implication, through advertisements in folders, circulars, newspapers and magazines that said devices would not merely mask, but would destroy and eliminate, odors of many kinds by oxidation;

The facts being that while it was its purpose, in installing its devices, to have them so adjusted that the amount of free ozone in the atmosphere would be just below that at which its odor is perceptible—approximately 1 part of ozone to 20,000,000 parts of air—changes from the conditions prevailing at the time of installation, such as decreased humidity, less exchange with outside air, less smoke, less odor, might result in an increase in the ratio of ozone to air to a degree which would render it irritant to the respiratory organs; while some odors are oxidizable by ozone, they might be present in such concentrations that they could not be more than partially oxidized by the concentrations of ozone which said devices were capable of producing, and the unoxidized remainder would be perceptible; other odors are not affected by ozone; and both types of odors are rendered less perceptible by reason of fatigue of the organs of smell, with consequent blunting of the sensory capacity, caused by airozone mixtures; and when the odor of ozone is perceptible there is, in addition, a masking effect on other odors;

- (d) Failed to reveal in their advertisements that the concentration of ozone should not be permitted to exceed one-half part of ozone per million parts of air, that breathing near the devices in operation should be avoided, or that the inhalation of an excessive amount of ozone might result in irritation to the respiratory organs; and
- (e) Represented, as above set forth, that said devices would eliminate all offensive