

IN THE MATTER OF
JOHN B. STETSON COMPANY

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

Docket 5172. Complaint, June 3, 1944—Decision, Oct. 8, 1945

Where the largest producer and distributor of men's hats, selling its products to several thousand retailers throughout the United States under its own name and brand names denoting style and price range—such as "Play Boy," "Sportlite," "Medalist," "Stratoliner," "Premier," "Royal," "Imperial," "Sovereign," etc., the retail prices of which ranged from \$5.00 to \$150.00—

- (a) Discriminated in price by selling such hats to some of its customers at higher prices than it sold them to their competitors through granting discriminatory additions to its legal trade discount of 2 percent ranging from 2 percent to 7 percent, and, later, 8 percent, under 3 consecutive so-called "cumulative quantity" discount schedules, depending on annual total purchases ranging, in the last, from \$5,000 to over \$200,000;
- (b) Discriminated in price between competing purchasers by making lower prices on hats to some based upon the total quantity or volume sold and delivered to all of their separate branches or outlets, although separate delivery was made to such branches, when such total amounted to certain required minima during the fiscal year, without regard to the quantity delivered to the respective branches;

Effect of which various discriminations in price had been or might be substantially to lessen competition in the line of commerce concerned and to injure, destroy, or prevent competition between purchasers receiving the benefit of said discriminatory prices and those from whom they were withheld:

Held, That such discriminations in price constituted violations of subsection (a) of Section 2 of the Clayton Act as amended; and

Where aforesaid corporation—

- (c) Made cash payments or allowances to favored customers, including operators of chains and branches, for advertising, display and other promotional activities, without making available on proportional equal terms, or on any terms, to competing customers thereof, able and willing to furnish the same kind of services, and such allowances, payment of which it did not make known to its customers generally:

Held, That such granting to favored customers of advertising allowances without making such allowances available to competing customers on proportionally equal terms constituted violation of subsection (d) of Section 2 of the Clayton Act as amended.

Mr. A. H. Forkner for the Commission.

Saul, Ewing, Remick & Harrison, of Philadelphia, Pa., for respondent.

Complaint

COMPLAINT

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

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent John B. Stetson Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Fifth St. and Montgomery Ave., Philadelphia, Pa.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling and distributing men's hats under various brand names, all of which feature the name "Stetson" in addition to arbitrary brand names selected denoting style and price range, such as "Play Boy," "Sportlite," "Fast Colors," "Medalist," "Stratoliner," "Premier," "Royal," "Imperial," "Sovereign," etc. The resale or retail prices of these brands range from \$5 to \$150. Respondent enters into contracts with its various customers to whom it sells its hats, and said contracts fix the price and terms of sale at which such hats are sold by such customers at retail to the consuming public. Respondent, by volume of sales, is the largest producer and distributor of men's hats in the United States. Respondent sells and distributes its hats in commerce between and among the various States of the United States and in the District of Columbia and, as a result of such sales, causes said hats to be shipped and transported from its place of business to purchasers thereof who are located in the various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said hats across State lines between respondent's factory and the purchasers of said hats. Said hats are sold and distributed for use and resale within the various States of the United States and in the District of Columbia. Respondent sells its men's hats directly to several thousand retail resellers located in cities and towns throughout the United States.

Complaint

41 F. T. C.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and with individuals, partnerships and firms who are likewise engaged in the business of manufacturing, selling and distributing men's hats in interstate commerce.

Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the resale of men's hats within the trade areas in which respondent's said customers respectively offer for sale and sell the men's hats purchased from the respondent.

PAR. 4. In the course and conduct of its said business, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying hats from the respondent, by selling such hats to some of its customers at higher prices than it sells its hats of like grade and quality to other customers who are competitively engaged with customers receiving the lower prices, in the resale of said hats within the United States.

Respondent grants and allows to all of its customers a regular trade discount of 2 percent to be deducted from the invoice price if the invoice is paid within a specified time. The price discriminations herein alleged, and those hereinafter set forth, are in the form of discriminatory additions to the regular trade discount of 2 percent.

PAR. 5. The respondent has discriminated in price by the use of a so-called "cumulative quantity" discount schedule whereby it has sold to some customers at higher prices than it has sold men's hats of like grade and quality to other customers who are in competition with them in the resale of said hats within the United States. The so-called "quantity discount" schedule varied for the years 1940, 1941, and 1942, and was and is governed by the customer's cumulative total of purchases during each year. For the year ending October 31, 1941, the so-called "cumulative quantity" discount schedule effected by the respondent was as follows:

<i>Annual Purchases Ranging From:</i>		<i>Percent</i>
\$25,000 to \$49,999.99	-----	2
\$50,000 to \$99,999.99	-----	4½
\$100,000 and over	-----	7

From November 1, 1941, to October 31, 1942, the respondent's "cumulative quantity" discount schedule was as follows:

Complaint

<i>Annual Purchases Ranging From:</i>		<i>Percent</i>
\$25,000 to \$49,999.99	-----	2
\$50,000 to \$74,999.99	-----	4½
\$75,000 to \$99,999.99	-----	6
\$100,000 to \$249,999.99	-----	7
\$250,000 and over—6 percent overage on the volume exceeding \$250,000		

From November 1, 1942 to October 31, 1943, and thereafter, the respondent's "cumulative quantity" discount schedule has been and is as follows:

<i>Annual Shipments</i>	<i>Quantity Discounts</i>
	<i>Percent</i>
\$5,000 to \$7,499.99	----- 2
\$7,500 to 9,999.99	----- 2½
\$10,000 to 14,999.99	----- 3
\$15,000 to 24,999.99	----- 3½
\$25,000 to 34,999.99	----- 4
\$35,000 to 49,999.99	----- 4½
\$50,000 to 74,999.99	----- 5
\$75,000 to 99,999.99	----- 6
\$100,000 to 199,999.99	----- 7
\$200,000 and over	----- 8

PAR. 6. In addition to the discriminations effected by the aforementioned "cumulative quantity" discount schedules, respondent discriminates in price between different purchasers of its products who are in competition with each other by making lower prices on hats to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of such customers, although separate delivery is made to the several branches or outlets of such customers, if and when such total quantity or volume amounts to certain required minima during the fiscal year period without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 7. The effect of the discriminations in price generally alleged in paragraph 4 hereof and of the discriminations specifically set forth in paragraphs 5 and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged and to injure, destroy or prevent competition between purchasers receiving the benefit of said discriminatory prices and those from whom they are withheld.

Complaint

41 F. T. C.

Such discriminations in price by respondent between different purchasers of men's hats of like grade and quality in interstate commerce in the manner and form aforesaid are in violation of the provisions of subsection 2 (a) of Section 1 of said Act of Congress approved June 19, 1936 entitled "An Act to amend section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended U.S.C. Title 15, Section 13 and for other purposes."

Count II

Charging violation of subsection (d) of Section 2 of the Clayton Act as amended, the Commission alleges:

PARAGRAPH 1. Paragraphs 1 to 3, inclusive, of count I of this complaint are hereby repeated and made a part of this charge as fully and with the same effect as though herein again set forth at length.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now granting compensation in the form of cash payments and allowances to some of its customers who are selected by the respondent for advertising display and other promotional activities. Such payments or allowances have been and are granted to favored customers in consideration of the advertising display and other promotional services furnished by them in connection with the resale of the respondent's hats. The respondent makes such cash payments or allowances to its favored customers without making them available on proportionally equal terms to other of its customers who compete with such favored customers in the resale and distribution of respondent's said hats. Such other customers are able and willing to furnish the same kind of advertising or display services and promotional facilities to the respondent as those furnished by its favored customers.

Instances and illustrations of the general practice above alleged and thus pursued by the respondent in granting allowances and compensation to its favored customers are the following:

1. The respondent paid to its favored customer, Young's Merchandising Corporation, operating 26 retail men's hat stores in New York City, for the fiscal year 1941 the sum of \$11,904.78, and for the fiscal year 1942 the sum of \$14,889.91 as an advertising and display allowance, while the respondent did not make such payments available on proportionally equal terms, or on any terms, to competing customers.

2. The respondent paid to its favored customer, Wallach's Inc.,

of New York City, a corporate subsidiary of Hart, Schaffner, & Marx, Chicago, Ill., operating 9 men's furnishings stores in the Metropolitan area of New York City, the sum of \$6,600 per year for window displays of "Stetson" hats, in the Fifth Avenue windows of Wallach's, Inc.'s stores located at 45th St. and Fifth Ave., and 33rd St. and Fifth Ave., New York, for 32 weeks each year, and similar window displays during 22 weeks of each year on the 45th St. side of Wallach's, Inc.'s store located at 45th St. and Fifth Ave., while respondent did not and does not make such payments available on proportionally equal terms or on any terms, to competing customers.

3. The respondent paid to its favored customer, Maurice L. Rothschild, of Chicago, Ill., having branches at St. Paul, Minn. and Minneapolis, Minn., the sum of \$1,000 per month for advertising and window display, while the respondent did not and does not make such payment available on proportionally equal terms, or on any terms, to competing customers.

PAR. 3. The respondent has not made known to its customers generally but only to its favored customers, that it grants and allows any compensation for advertising, display and other promotional services.

PAR. 4. The above acts and practices of respondent are in violation of subsection (d) 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.

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 Section 1 of an act entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C. Title 15, Sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on June 3, 1944, issued and subsequently served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsections (a) and (d) of Section 2 of said act as amended.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to

Findings

41 F. T. C.

substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that subsections (a) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, have been violated by the respondent, now makes this its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent John B. Stetson Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Fifth St. and Montgomery Ave., Philadelphia, Pa.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling, and distributing men's hats under various brand names, all of which feature the name "Stetson" in addition to arbitrary brand names selected denoting style and price range, such as "Play Boy," "Sportlite," "Medalist," "Stratoliner," "Premier," "Royal," "Imperial," "Sovereign," etc. The resale or retail prices of these brands range from \$5.00 to \$150.00. Respondent, by volume of sales, is the largest producer and distributor of men's hats in the United States. Respondent sells and distributes its hats in commerce between and among the various States of the United States and in the District of Columbia and, as a result of such sales, causes said hats to be shipped and transported from its place of business to purchasers thereof who are located in the various States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned herein a continuous course of trade and commerce in said hats across State lines between respondent's factory and the purchasers of said hats. Said hats are sold and distributed for use and resale within the various States of the United States and in the District of Columbia. Respondent sells its men's hats directly to several thousand retail resellers located in cities and towns throughout the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the times herein mentioned has been in substantial competition with other corporations and with in-

dividuals, partnerships and firms who are likewise engaged in the business of manufacturing, selling, and distributing men's hats in interstate commerce.

Many of respondent's customers are competitively engaged with each other and with the customers of respondent's competitors in the resale of men's hats within the trade areas in which respondent's said customers respectively offer for sale and sell the men's hats purchased from the respondent.

PAR. 4. In the course and conduct of its said business, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying hats from the respondent, by selling such hats to some of its customers at higher prices than it sells its hats of like grade and quality to other customers who are competitively engaged with customers receiving the lower prices, in the resale of said hats within the United States.

Respondent grants and allows to all of its customers a regular trade discount of 2 percent to be deducted from the invoice price if the invoice is paid within a specified time. The price discriminations referred to, and those hereinafter set forth, are in the form of discriminatory additions to the regular trade discount of 2 percent.

PAR. 5. The respondent has discriminated in price by the use of a so-called "cumulative quantity" discount schedule, whereby it has sold to some customers at higher prices than it has sold men's hats of like grade and quality to other customers who are in competition with them in the resale of said hats within the United States. The so-called "quantity discount" schedule varied for the years 1940, 1941, and 1942, and was and is governed by the customer's cumulative total of purchases during each year. For the year ending October 31, 1941, the so-called "cumulative quantity" discount schedule effected by the respondent was as follows:

Annual Purchases Ranging From:

	Percent
\$25,000 to \$49,999.99 -----	2
\$50,000 to \$99,999.99 -----	4½
\$100,000 and over -----	7

From November 1, 1941, to October 31, 1942, the respondent's "cumulative quantity" discount schedule was as follows:

Annual Purchases Ranging From:

	Percent
\$25,000 to \$49,999.99 -----	2
\$50,000 to \$74,999.99 -----	4½
\$75,000 to \$99,999.99 -----	6
\$100,000 to \$249,999.99 -----	7
\$250,000 and over—6 percent overage on the volume exceeding \$250,000	

Findings

41 F. T. C.

From November 1, 1942, to October 31, 1943, and thereafter, the respondent's "cumulative quantity" discount schedule has been and is as follows:

<i>Annual Shipments</i>		<i>Quantity Discounts</i>
		<i>Percent</i>
\$5,000 to	\$7,499.99	2
\$7,500 to	\$9,999.99	2½
\$10,000 to	\$14,999.99	3
\$15,000 to	\$24,999.99	3½
\$25,000 to	\$34,999.99	4
\$35,000 to	\$49,999.99	4½
\$50,000 to	\$74,999.99	5
\$75,000 to	\$99,999.99	6
\$100,000 to	\$199,999.99	7
\$200,000 and over		8

PAR. 6. In addition to the discriminations effected by the aforementioned "cumulative quantity" discount schedules, respondent has discriminated in price between different purchasers of its products who are in competition with each other by making lower prices on hats to some customers based upon the total quantity or volume sold and delivered to all of the separate branches or outlets of such customers, although separate delivery was made to the several branches or outlets of such customers, if and when such total quantity or volume amounted to certain required minima during the fiscal year period without regard to the quantity or volume delivered to the respective branches or outlets of such customers.

PAR. 7. The effect of the discriminations in price found in paragraph 4 hereof and of the discriminations specifically set forth in paragraphs 5 and 6 hereof has been or may be substantially to lessen competition in the line of commerce in which the purchasers receiving and those denied the benefits of such discriminatory prices are engaged, and to injure, destroy, or prevent competition between purchasers receiving the benefit of said discriminatory prices and those from whom they were withheld.

PAR. 8. In the course and conduct of its business as aforesaid, respondent, since June 19, 1936, has been and is now granting compensation in the form of cash payments and allowances to some of its customers who are selected by the respondent for advertising display and other promotional activities. Such payments or allowances have been and are granted to favored customers in consideration of the advertising display and other promotional services furnished by them in connection with the resale of the respondent's hats. The respondent makes such cash payments or allowances to its favored customers without making them available on proportionally

equal terms to other of its customers who compete with such favored customers in the resale and distribution of respondent's said hats. Such other customers are able and willing to furnish the same kind of advertising or display services and promotional facilities to the respondent as those furnished by its favored customers.

Instances and illustrations of the general practice above found and thus pursued by the respondent in granting allowances and compensation to its favored customers are the following:

1. The respondent paid to its favored customer Young's Merchandising Corporation, operating 26 retail men's hat stores in New York City, for the fiscal year 1941 the sum of \$11,904.78, and for the fiscal year 1942 the sum of \$14,889.91 as an advertising and display allowance, while the respondent did not make such payments available on proportionally equal terms, or on any terms, to competing customers.

2. The respondent paid to its favored customer Wallach's Inc., of New York City, a corporation subsidiary of Hart, Schaffner & Marx, Chicago, Ill., operating 9 men's furnishings stores in the metropolitan area of New York City, the sum of \$6,600 per year for window displays of "Stetson" hats, in the Fifth Avenue windows of Wallach's, Inc.'s stores located at 45th St. and Fifth Ave., and 33rd St. and Fifth Ave., New York, for 32 weeks each year, and similar window displays during 22 weeks of each year on the 45th St. side of Wallach's, Inc.'s store located at 45th St. and Fifth Ave., while respondent did not and does not make such payments available on proportionally equal terms, or on any terms, to competing customers.

3. The respondent paid to its favored customer Maurice L. Rothschild, of Chicago, Ill., having branches at St. Paul, Minn., and Minneapolis, Minn., the sum of \$1,000 per month for advertising and window display, while the respondent did not and does not make such payment available on proportionally equal terms, or on any terms, to competing customers.

PAR. 9. The respondent has not made known to its customers generally, but only to its favored customers, that it grants and allows any compensation for advertising, display, and other promotional services.

CONCLUSIONS

Under the facts and circumstances as set forth in the foregoing findings as to the facts, the Commission concludes that respondent, John B. Stetson Company, has discriminated in price in the sale of its products between the different purchasers in violation of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Order

41 F. T. C.

The Commission further concludes that respondent, John B. Stetson Company, has granted to favored customers advertising allowances without making such allowances available to competing customers on proportionally equal terms in violation of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusions herein, which findings and conclusions are hereby made a part hereof, and the Commission having concluded 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.

It is ordered, That respondent, John B. Stetson Company, a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of men's hats in interstate commerce for use or resale, do forthwith cease and desist:

1. From selling such products of like grade and quality to competing purchasers at uniform prices and thereafter granting varying discounts therefrom in the manner and under the circumstances found in paragraph 5 of the aforesaid findings as to the facts.

2. From continuing or resuming the discriminations in price referred to and described in paragraph 5 of the aforesaid findings as to the facts.

3. From otherwise discriminating in price between purchasers of men's hats of like grade and quality in any manner or degree substantially similar to the manner and degree of the discriminations referred to in paragraph 4, 5, and 6 of the aforesaid findings as to the facts, or in any other manner resulting in price discriminations substantially equal in amount to the aforesaid discriminations, except as permitted by Section 2 of the Clayton Act as amended.

4. From paying, giving, allowing or contracting to pay, give or allow anything of value to or for the benefit of some of its customers for advertising services furnished by such customers without mak-

244

Order

ing such payments or allowances available to all competing customers on proportionally equal terms.

It is further ordered, That the 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.

256

FEDERAL TRADE COMMISSION DECISIONS

Complaint

41 F. T. C.