

Complaint

IN THE MATTER OF
BULOVA WATCH COMPANY, INC.

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

Docket 5830. Complaint, Dec. 1, 1950—Decision, Mar. 17, 1952

Under the provisions of subsec. (d) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act, the seller has the free choice whether to contract to pay allowances to or for the benefit of its customers in consideration of services or facilities furnished by such customer in connection with the resale of products purchased, and has the further free choice as to the basis upon which such payments will be made, but if decision to pay such allowances has been made, the statute enjoins the seller to make such payments available on proportionally equal terms to all customers competing in the resale of the seller's products.

Where a corporate manufacturer of men's and women's watches which in 1948 sold about \$48,000,000 worth to single retail jewelry stores, chain jewelry stores, and department stores, competing with one another—

Paid or contracted to pay money to customers as compensation for advertising services furnished by them in connection with the sale or offering for sale of its watches without making such payments available on proportionally equal terms to all in that competing customers, received varying percentages on their respective purchase volume due to the varying percentages allowed for the different purchase brackets:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (d) of Sec. 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William H. Smith and *Mr. Peter J. Dias* for the Commission.

Cravath, Swaine & Moore, of New York City, and *Clifford & Miller*, of Washington, D. C., for respondent.

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 violated and is now violating the provisions of subsection (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:

PARAGRAPH 1. Respondent Bulova Watch Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

Complaint

48 F. T. C.

PAR. 2. Respondent is now, and for many years has been, engaged in the business of manufacturing and selling men's and women's watches, and has come to occupy an important position in that industry. It manufactures said watches in plants located in New York, Rhode Island, and Massachusetts, and sells them to a large number of customers with places of business located throughout the several States of the United States and in the District of Columbia for resale within the United States to consumers. Said customers are single-unit retail jewelry stores, multiple-unit or chain retail jewelry stores, and department stores. During the year 1948, respondent's dollar volume of sales of said watches amounted to approximately \$48,000,000.

PAR. 3. In the course and conduct of said business, respondent engaged in commerce, as commerce is defined in the Clayton Act as amended by the Robinson-Patman Act, having shipped said watches, or caused them to be transported, from said States in which its said plants are located to said purchasers with places of business located in the same and in other States and in the District of Columbia.

PAR. 4. In the course of its said business in commerce respondent paid, or contracted to pay, money, credits, allowances, or other things of value to or for the benefit of some of its customers as compensation and in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers, in connection with the sale, or offering for sale, of respondent's watches which it manufactures, or offers for sale; and respondent did not make, or contract to make, such payments or considerations available on proportionally equal terms to all other of its customers competing in the distribution of respondent's said products.

PAR. 5. Among the payments alleged in Paragraph Four were those for advertising services or facilities, or advertising allowances. Said advertising allowances were available from respondent, and respondent paid or contracted to pay them, upon the following proportionally unequal terms:

Respondent classified its customers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of respondent's watches. Each of said groups consisted of those customers having volumes within the the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes.

No advertising allowances was available to those customers in the first or smallest volume bracket. To those customers in the second and each of the other progressively larger volume brackets, adver-

tising allowances were available which, as between and among customers in the same volume bracket, amounted to the same percentage or an equal proportion of their respective volumes, but which, as between and among customers in different volume brackets, amounted to different percentages or unequal proportions of such volumes, for the reason that the larger the volume bracket the greater the percentage or proportion of volume which was available.

The greatest percentage or proportion of volume which was thus available to customers in the largest volume bracket was not available to competing customers in the next largest or in any of the other smaller volume brackets, and the same was true with respect to each of the successively smaller percentages or proportions.

PAR. 6. As illustrative of respondent's advertising allowance practices, during the year 1948, said volume brackets and said percentages or proportions of volume available as said advertising allowances were substantially as shown in columns one and two, respectively, of the table herein set forth. The third column in said table sets forth approximately the number of customers in each of said volume brackets, and the total number of customers in all of said volume brackets. The fourth column in said table sets forth approximately the total volumes of all customers in each of said volume brackets and the total volumes of all customers in all of said volume brackets. The fifth and last column in said table sets forth approximately the total dollar amount of said advertising allowances paid to all of the customers in each of said volume brackets and the total dollar amount of said advertising allowances paid to all of the customers in all of said volume brackets. Said advertising allowances were paid by check, credit memoranda or by permitting customers to make deductions from invoiced prices.

(1) Volume Brackets	(2) Percent- ages	(3) Number of Customers	(4) Volumes	(5) Amount of Allowance
Under \$10,000.....	0	8,900+	\$23,300,000+	0
\$10,000 to \$20,000.....	1	345	4,532,413	\$45,324
\$20,000 to \$40,000.....	2	199	5,052,473	101,049
\$40,000 to \$75,000.....	3	81	4,275,585	128,277
\$75,000 to \$125,000.....	4	33	2,741,033	103,641
\$125,000 to \$200,000.....	5	11	1,580,009	79,000
\$200,000 to \$300,000.....	6	9	2,359,224	141,553
\$300,000 to \$400,000.....	7	3	1,275,565	89,289
\$400,000 to \$500,000.....	8	0	0	0
\$500,000 to \$750,000.....	9	1	877,311	78,958
\$750,000 to \$1,000,000.....	10	1	1,467,221	143,722
\$1,000,000 and over.....				
		8,683+	47,653,919+	919,806

Respondent classified its customers as retail cash and credit jewelers, chain retail stores and department stores. The above table includes all of respondent's said customers, and each customer in each volume bracket was in competition with one or more other customers in one or more other volume brackets in the resale of respondent's watches to consumers.

PAR. 7. The acts and practices of the respondent as above alleged violate subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act (U. S. C. Title 15, Sec. 13).

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. Sec. 13), the Federal Trade Commission on December 1, 1950, issued and subsequently served its complaint in this proceeding upon Bulova Watch Company, Inc., a corporation, charging said respondent with violation of subsection (d) of Section 2 of said Act, as amended. After the filing by respondent of its answer to the complaint, pursuant to leave to withdraw such original answer and to file amended answer as subsequently granted to respondent by the hearing examiner of the Commission designated in the complaint, respondent's amended answer was filed in which amended answer the respondent, for the purposes of this proceeding, admitted all the material allegations of fact set forth in the complaint, waived hearing as to the facts and consented to the entry of findings as to the facts based upon the complaint and the answer and the issuance against it of an order to cease and desist, upon the condition, however, that no order to cease and desist be issued or served upon it until orders are entered disposing of the complaints against The Gruen Watch Company, Federal Trade Commission Docket No. 5836, and Elgin National Watch Company, Federal Trade Commission Docket No. 5837; and on May 25, 1951, the hearing examiner filed his initial decision.

Thereafter, within the time permitted by the Rules of Practice of the Commission, respondent appealed from the initial decision of the hearing examiner and this proceeding regularly came on for final consideration by the Commission upon the record herein, including the respondent's brief in support of its appeal and the brief in opposition thereto filed by counsel supporting the complaint (oral argument not having been requested); and the Commission, having duly considered

the record and having ruled upon said appeal and being now fully advised in the premises, makes the following findings as to the facts, conclusion drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Bulova Watch Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now, and for many years has been, engaged in the business of manufacturing and selling men's and women's watches, and has come to occupy an important position in that industry. It manufactures said watches in plants located in New York, Rhode Island, and Massachusetts, and sells them to a large number of customers with places of business located throughout the several States of the United States and in the District of Columbia for resale within the United States to consumers. Said customers are single-unit retail jewelry stores, multiple-unit or chain retail jewelry stores, and department stores. During the year 1948, respondent's dollar volume of sales of said watches amounted to approximately \$48,000,000.

PAR. 3. In the course and conduct of its business as aforesaid and during all of the times mentioned herein, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, having shipped its watches, or caused them to be transported, from the States in which its plants are located to the purchasers thereof with places of business located in the same and in other States and in the District of Columbia.

PAR. 4. In the course of its said business in commerce, respondent paid or contracted to pay money to some of its customers as compensation and in consideration for advertising services furnished by such customers in connection with the sale or offering for sale of watches manufactured and sold by respondent in accordance with the advertising allowance plan set out in Paragraphs Five and Six of these findings as to the facts, and such plan did not make or purport to make such payments available on proportionally equal terms to all of its customers competing in the distribution of respondent's said products.

Findings

48 F. T. C.

PAR. 5. Said advertising allowances were available from respondent, and respondent paid or contracted to pay them, upon the following proportionally unequal terms:

Respondent classified its customers by size, from smallest to largest, into several groups on the basis of their respective volumes, volumes referring to the dollar amount of annual purchases of respondent's watches. Each of said groups consisted of those customers having volumes within the range of volumes, or volume bracket, specified for it; and the several volume brackets, respectively, covered ranges of progressively larger volumes.

No advertising allowance was available to those customers in the first or smallest volume bracket. To those customers in the second and each of the other progressively larger volume brackets, advertising allowances were available which, as between and among customers in the same volume bracket, amounted to the same percentage or an equal proportion of their respective volumes, but which, as between and among customers in different volume brackets, amounted to different percentages or unequal proportions of such volumes, for the reason that the larger the volume bracket the greater the percentage or proportion of volume which was available.

The greatest percentage or proportion of volume which was thus available to customers in the largest volume bracket was not available to competing customers in the next smaller volume bracket or in any of the other smaller volume brackets, and the same was true with respect to each of the successively smaller percentages or proportions.

PAR. 6. As illustrative of respondent's advertising allowance practices, during the year 1948, said volume brackets and said percentages or proportions of volume available as said advertising allowances were substantially as shown in columns one and two, respectively, of the table herein set forth. The third column in said table sets forth approximately the number of customers in each of said volume brackets, and the total number of customers in all of said volume brackets. The fourth volume in said table sets forth approximately the total volumes of all customers in each of said volume brackets and the total volumes of all customers in all of said volume brackets. The fifth and last column in said table sets forth approximately the total dollar amount of said advertising allowances paid to all of the customers in each of said volume brackets and the total dollar amount of said advertising allowances paid to all of the customers in all of said volume brackets. Said advertising allowances were paid by check, credit memoranda or by permitting customers to make deductions from invoiced prices.

971

Conclusion

(1) Volume Brackets	(2) Percent- ages	(3) Number of Customers	(4) Volumes	(5) Amount of Allowance
Under \$10,000.....	0	8,000+	\$23,300,000+	0
\$10,000 to \$20,000.....	1	345	4,532,413	\$45,324
\$20,000 to \$40,000.....	2	199	5,052,473	101,049
\$40,000 to \$75,000.....	3	81	4,275,585	128,267
\$75,000 to \$125,000.....	4	33	2,741,033	109,641
\$125,000 to \$200,000.....	5	11	1,580,109	73,000
\$200,000 to \$400,000.....	6	9	2,359,224	141,553
\$400,000 to \$ 600,000.....	7	3	1,275,565	89,289
\$ 600,000 to \$800,000.....	8	0	0	0
\$800,000 to \$1,000,000.....	9	1	877,311	78,958
\$1,000,000 and over.....	10	1	1,467,221	146,722
		8,683+	47,953,919+	919,806

Respondent classified its customers as retail cash and credit jewelers, chain retail stores and department stores. The above table includes all of respondent's said customers, and each customer in each volume bracket was in competition with one or more other customers in one or more other volume brackets in the resale of respondent's watches to consumers.

CONCLUSION

1. Respondent under subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, has the free choice whether to pay or contract to pay allowances to or for the benefit of its customers in consideration of services or facilities furnished by such customer in connection with the resale of products purchased, and has the further free choice as to the basis upon which such payments will be made by it.

2. When the decision to pay such allowances has been made, the statute enjoins respondent to make such payments available on proportionally equal terms to all customers competing in the resale of respondent's products.

3. This injunction has been ignored by respondent, on the facts admitted and found in this proceeding in two particulars. Respondent selected annual dollar volume of purchases as the basis for payments to its customers. It classified its customers according to arbitrarily fixed annual dollar purchase volume brackets and paid the same percentage or proportion of each customer's annual dollar purchase volume to each such customer within a given bracket. However, these percentages or proportions varied with the bracket so that each competing customer of respondent did not receive the same percentage or proportion of his purchase volume. Thus one customer received 10% of his annual dollar purchases, 199 others only 2% of theirs.

Order

48 F. T. C.

Furthermore, where purchases did not aggregate \$10,000 for the year, a customer received nothing. Eight thousand of respondent's customers thus received nothing; 683 received \$919,806. There was thus a lack of equal proportionality between many customers competing in the sale of respondent's products who received payments and a complete absence of any proportionality between those customers who received something and those competing customers who received nothing.

4. The acts and practices of the respondent, in the particulars mentioned above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondent Bulova Watch Company, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or offering for sale of men's and women's watches, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(1) Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer for advertising services or facilities furnished by or through such customer unless such payment or consideration is available on proportionally equal terms to all other customers of respondent who, in fact, compete with the favored customer in the resale of respondent's products.

(2) Paying or allowing, or contracting to pay or allow, anything of value to or for the benefit of any customer for advertising services or facilities furnished by or through said customer, as a percentage or proportion of dollar volume of purchases by such customer different from the percentage or proportion offered or granted any other customer where such customers compete in fact in the resale of such products and where such payments are based on the amount of purchases made.

(3) Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer, as compensation, or in consideration for, any services or facilities furnished by, or through, such customer in connection with the processing, handling, sale or offering for sale, of any products manufactured or sold by respondent, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That the respondent shall, within sixty (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.

Complaint

IN THE MATTER OF
GRUEN WATCH COMPANY

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

Docket 5836. Complaint, Jan. 4, 1951—Decision, Mar. 17, 1952

Under the provisions of subsec. (d) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act, the seller has the free choice of making payments for advertising services furnished by the customer in connection with the sale or offering for sale of products made by said seller, or of not making such payments, and choice of the basis on which any such payments shall be made, subject to the requirement simply that such payments shall be available on proportionally equal terms to all customers who compete in distribution of said products.

Where a corporation long engaged in the manufacture and interstate sale of men's and women's watches to large numbers of customers throughout the United States, including retail jewelry stores and a few department stores and industrial houses, many in competition with each other in the resale thereof—

Paid or contracted to pay money to customers as compensation for advertising services furnished by them in connection with the sale or offer of its said watches, without making such payments available on proportionally equal terms to all of competing customers in that, due to the varying percentages allowed for the different annual purchase brackets, competing customers received varying percentages on their respective purchase volume; so that while no volume bracket of customers was excluded from participation, and there was equality of participation on the part of competing customers within a particular volume bracket, there was inequality among competing customers in different brackets:

Held, That such acts and practices, under the circumstances set forth, violated subsec. (d) of Sec. 2 of the Clayton Act as amended.

Before *Mr. Frank Hier*, hearing examiner.

Mr. William H. Smith and *Mr. Peter J. Dias* for the Commission.

Taft, Stettinius & Hollister, of Cincinnati, Ohio, and *Guggenheimer, Untermeyer, Goodrich & Amram*, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more