

VITRIFIED CHINA ASSOCIATION, INC., ET AL., Washington, D. C., Docket 5719. Complaint, December 9, 1949. Order, March 6, 1953.

Charge: Entering into and carrying out an unlawful understanding and conspiracy to hinder and limit competition in price and otherwise in the manufacture, sale, and distribution of vitrified china hotel ware, and aiding and abetting said undertakings and practices through (a) cooperatively formulating, agreeing upon, and revising a list of base prices to be used; (b) agreeing upon amounts to be added to and deducted from such base list prices; and (c) agreeing upon terms and conditions upon which sales of said chinaware were to be made; on the part of respondent association (the members of which embrace substantially all manufacturers of vitrified chinaware in the United States and occupy a dominant and controlling position in the industry); 8 officers thereof; 12 manufacturer members; and 2 manufacturer nonmembers, who cooperated in said practices and activities; with the effect of substantially lessening and suppressing competition involved, and with other prejudicial effects and tendencies.

By decision of the Commission, appeals by respondents from initial decision of hearing examiner, which held that respondents, with the exception of one individual, had entered into agreements affecting the price of such hotel ware in violation of section 5 of the Federal Trade Commission Act, were granted without ruling individually on each appeal; appeal by counsel supporting the complaint from the initial decision on the ground that the order therein was too narrow in scope to provide effective relief, was denied; and the complaint was dismissed as not sustained by the evidence of record, for the reasons stated in the Commission's opinion by Commissioner Mead, as follows:

OPINION OF THE COMMISSION

By MEAD, *Commissioner*:

This proceeding is before the Federal Trade Commission upon appeals from an initial decision of a hearing examiner of the Commission holding that respondents, with exception of Frederic J. Grant, have entered into agreements affecting the price of a type of china known as hotel ware, in violation of section 5 of the Federal Trade Commission Act. These respondents have appealed to the Commission contending that this initial decision is not supported by the evidence of record. Counsel supporting the complaint in this proceeding also has appealed contending that the order, contained in the initial decision, is too narrow in scope to provide effective relief from respondents' practices found to be illegal.

This proceeding is limited to respondents' acts in connection with the manufacture, sale and distribution of hotel ware. Hotel ware is heavyweight vitrified china made for hotels, restaurants and other commercial establishments. There are approximately 1,700 different sizes and shapes of hotel ware, three different body colors, and a large number of different decorations available. Thus, there are practically innumerable items of hotel ware of different combinations of shape, color and decoration which can be purchased from respondents.

Respondents sell their hotel ware f. o. b. the place of manufacture. Shipping costs are paid by the purchaser. A respondent's f. o. b. price on a particular item can be determined by combining the amount set out for the item in respondent's "basic list" with his current discount or plusage for that item as set out in his latest "discount sheet" plus any price increase which may have been announced by respondent applicable to the item plus respondent's packing charge for the items ordered.

There are two "basic lists"—the "white list" and the "decorated list." The "white list" shows a dollar and cents figure for each item or shape of hotel ware which is to be sold without decoration. The "decorated list" shows a dollar and cents figure for each item or shape of hotel ware which is to be sold with a decoration on it. The amounts set out on these basic lists are, with a few exceptions, the same for each listed item for each respondent manufacturer.

Each respondent manufacturer of hotel ware publishes lists of discounts and plusages to be used in connection with the basic lists in calculating its current price on the items listed. These discounts and plusages are designed to allow for differences in cost between items with different decorations, etc.

In addition, respondent manufacturers have made general price changes from time to time. In certain cases a respondent manufacturer's price change has applied to all of the items of hotel ware sold by it. In other cases such a price change has been applied only to certain classes of hotel ware. Such price changes are made known to the customers by means of price announcements issued by the particular company making the change. General price changes are rarely, if ever, reflected in the "basic lists" which have remained unchanged since 1946. After the applicable discount or plusage and price change has been applied to the amount set out for the item in the basic list, the packing charge is computed and included in the bill. Hotel ware may be shipped in barrels, casks or cartons, and the charge made to the purchaser varies with the method of packing.

Thus, the total amount paid by a purchaser for a particular item of hotel ware can only be calculated by combining the applicable amount in the basic list with the applicable discount or plusage, plus the

amount of price increase announced, if any, plus the packing charge and the actual cost of shipping from the point of manufacture to the place of delivery. Only if all of these factors are the same for each respondent manufacturer will the total price paid by a purchaser of a particular item of hotel ware regularly be the same regardless of which respondent manufacturer he buys from.

The record shows that only in their basic lists are the factors used by the respondent manufacturers in calculating their prices substantially the same. Due to differences in the locations of respondents' potteries, the weight of the product and the absence of the absorption of any part of the shipping charges by respondents, there exists a substantial difference in the shipping charges paid by a purchaser on identical purchases of hotel ware from the various respondent manufacturers. There is little or no uniformity in packing charges among respondent manufacturers. The announced price increases have varied from respondent to respondent; and while there has been uniformity on certain items in respondents' published discounts and plusages, there has also been a great amount of nonuniformity. As a result the total price paid at any given location for the same item of hotel ware has varied greatly depending upon from which of the respondents the item was purchased.

The only evidence of record as to any concert of action among respondents as to any of these pricing factors is in connection with the basic lists. It shows that in 1946 the respondent association employed a cost accountant to make the necessary cost studies to enable him to submit new white and decorated lists based upon actual cost figures of members of the association. The purpose of the study was to bring up the items which were priced too low and to bring down the items too high in relation to the actual costs of production. A study of 76 standard items was made which showed a wide divergence in the cost of individual items as between the seven plants studied. However, a revision of the basic lists as to certain of the items manufactured was prepared on the basis of the average of the costs in these seven plants. This revision was approved unanimously by a vote of the members present at a meeting of the respondent Association held May 22, 1946. The same or substantially similar revisions were made by each of the respondent manufacturers in their own published basic lists shortly thereafter.

Thus, the principal issue raised in this matter is:

Do respondents' acts and practices, as above described, constitute a combination in unreasonable restraint of trade? It is well settled that any agreement between competitors to fix their prices is per se an unreasonable restraint of trade and is unlawful under the Sherman

Act. Respondents herein have cooperatively caused a cost study to be made for the purpose and with the effect of revising basic lists used as one of several factors in calculating their individual prices. However, the record does not show that there was any intent to establish or fix in any manner the price at which the products were to be sold; nor does the record show that any uniformity or any fixed relationship was established as to the prices at which respondents sold their products. Also, there is no indication that this cooperative action was the first step toward an arrangement fixing in any manner the prices at which the products were to be sold or could grow into such an arrangement. The Commission, therefore, is of the opinion that respondents' cooperative action in revising their basic lists, which, if carried on as a part of a price fixing plan, would constitute illegal tampering with their price structures, under the circumstances of this case does not constitute price fixing or a combination in unreasonable restraint of trade.

The Commission being of the opinion that no violation of law has been established by this record, there is no necessity for considering the contention of counsel supporting the complaint that the hearing examiner's order was not adequate. Similarly, it is not believed necessary to rule individually on each of respondent's exceptions to the hearing examiner's initial decision, as it is being set aside.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Floyd O. Collins for the Commission.

Kittelle & Lamb, of Washington, D. C., for Vitrified China Association, Inc., its officers, The Walker China Co., Mayer China Co., Sterling China Co., Wallace China Co., and along with—

Mr. Lynne Anderson Warren, of New York City, for The Shenango Pottery Co.;

Mr. Martin A. Jacobs, of New York City, for Jackson Vitrified Co., Inc.;

Magavern, Magavern, Lowe & Gorman, of Buffalo, N. Y., for Buffalo Pottery, Inc.;

Estabrook, Estabrook, Burns & Hancock, of Syracuse, N. Y., for Iroquois China Co.;

Bond, Schoeneck & King, of Syracuse, N. Y., for Onondaga Pottery Co.;

Gerdes & Montgomery, of New York City, for American Limoges China, Inc.; and

Mr. John Scammell and *Mr. John Hall Forbes*, of New York City, for Scammell China Co.

Mr. John N. Sawyer, of Beaver, Pa., for Wellsville China Co.

Wyckoff & Wyckoff, of Grafton, W. Va., for Carr China Co.

LEVER BROTHERS Co., New York, N. Y., Docket 6020. Complaint, July 31, 1952. Order, March 13, 1953.

Charge: Advertising falsely or misleadingly as to nature of product and competitive products, in connection with the sale and distribution of respondent's Good Luck Oleomargarine, through the use in advertising of such expressions as "country-fresh" and "dairy department", long associated in the minds of many members of the purchasing public with dairy products, and through the use of such expressions as "the *table* margarine," "expressly for the table," "only new Good Luck (margarine) is pressure blended for table flavor," whereby respondent falsely represented that oleomargarine manufactured by respondent's competitors was not suitable for table use.

Dismissed without prejudice, pursuant to the hearing examiner's recommendation and following the tender and acceptance by the Commission of a proposed stipulation of facts and agreement to cease and desist, whereby respondent agreed not to use or disseminate any advertisement of its product, "Good Luck Margarine," containing any statements representing directly or by implication: (a) that said product was a dairy product, and (b) that competitors' products were not suitable for table use, the Commission being of the opinion that in the circumstances the public interest did not require a continuation of the proceeding at that time.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. A. S. Scott, Jr. for the Commission.

Mr. Martin J. Pendergast, of New York City, and *Arnold Fortas & Porter*, of Washington, D. C., for respondent.

D. PHILLIP ROBINSON and LARUE WRIGHT doing business as METROPOLITAN PASS BOOK Co., and HARRY SCHOOLER, GENERAL MANAGER, New York City, Docket 5996. Complaint, May 23, 1952. Order, April 3, 1953.

Charge: Advertising falsely or misleadingly as to offer involved, free product, money-back guarantee or refund, prices and value; in connection with the sale in commerce of pass books of coupons, as an advertising scheme designed to bring new customers into the business establishments of participating advertisers, mostly small businessmen, through the honoring by them of coupons with promised goods or services.

Proceeding closed without prejudice, pursuant to motion of counsel supporting complaint, which set forth that service of complaint upon respondent general manager, the real party in interest, had not been made in spite of every effort to do so, and that practices in question were short-lived promotions in various cities; and for lack of public interest in proceeding further at the time.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. J. J. McNally for the Commission.

Mr. Eugene L. Wolver, of Los Angeles, Calif., for D. Phillip Robinson.

MASTER LABORATORIES, INC., Omaha, Nebr., Docket 4908. Complaint, February 12, 1943. Order, June 17, 1953.

Charge: Advertising falsely as to qualities or properties of product, in connection with the compounding, selling and distributing of hog and poultry medicinal preparations designated as "Master Liquid Hog Medicine," "One-Shot Hog Wormer," "Master Florescine," "Master Fluid," "Master Liquid Poultry Medicine," and "Masterol."

Dismissed without prejudice, it appearing from facts developed during a supplemental informal investigation that the present operators of the business formerly conducted by corporate respondent have not, for more than 2 years, used any of the representations challenged in the complaint, and there is no reason to believe that they will resume use thereof; and the Commission being of the opinion that in the circumstances the public interest does not require further corrective action at this time.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. S. F. Rose, *Mr. Edward L. Smith*, *Mr. George M. Martin* and *Mr. R. P. Bellinger* for the Commission.

Mr. John E. von Dorn, of Omaha, Nebr., for respondent.

HENRY A. DREER, INC., Philadelphia, Pa., Docket 6035. Complaint, August 29, 1952. Order, June 28, 1953.

Charge: Advertising falsely or misleadingly as to soil conditioning properties, comparative merits and cost, tests and use of product, and time in business, in connection with the interstate sale and distribution of a liquid soil conditioner—basically an aqueous sodium polyacrylate solution—designated "Fluffium."

Dismissed for the reason that, since issuance of the complaint, respondent upon its own petition was adjudged a bankrupt, and all stocks of "Fluffium," and its trade name, were acquired by the corporate intervenor herein, which has expressed its intention of avoiding and misrepresentation in the advertising of the product, and of participating in the pending trade practice conference for the chemical soil conditioner industry; it appearing, consequently, that trial of the issues raised by the complaint would serve no useful purpose and would not be in the public interest.

Before *Mr. William L. Pack*, hearing examiner.

Mr. William L. Pencke for the Commission.

Montgomery, McCracken, Walker & Rhoads, of Philadelphia, Pa., and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for respondent.

Clark, Ladner, Fortenbaugh & Young, of Philadelphia, Pa., for Supplee-Biddle-Steltz Co., intervenor.

MARINE TOBACCO CO. ET AL., New York, N. Y., Docket 5747. Complaint, March 1, 1950. Order, June 30, 1953.

Charge: Restraining and monopolizing trade and price fixing, in connection with the sale and distribution of tax-free cigarettes to sea stores or "slop chests" of merchant ships engaged in foreign trade, as well as certain limited coastal trade, and on the part of corporate respondent, which, with a dominant position in said activity in the port of New York for at least 10 years (and the only distributor in said port generally so engaged excepting the New Jersey sector, as compared with ports other than Boston, where there are generally two or more authorized distributors), sold about 95 percent of the tax-free cigarettes there sold.

Various means, methods, acts, and practices employed by corporate respondent, joined with three individuals, its officers, to effect such suppression of competition and maintain its virtual monopoly included the following:

- (1) Exerting pressure on manufacturers of said cigarettes, based on its power and good will with the shipping trade and its potential power to injure them, to induce them to refrain from supplying competitors with their said products;

- (2) Threatening to contact sources of supply of distributors in neighboring ports, such as Baltimore and Philadelphia, for the purpose of having their supplies cut off; or to enter their distribution territory with competition that would probably eventually eliminate them from business, if they sold directly in the port of New York or to competitors in said port;

- (3) Securing from distributors in the ports of Baltimore and Philadelphia, through coercion and pressure, an understanding that they would not sell said products in the trading area of the port of New York, in consideration of which it agreed that it would not compete with them in their said trading areas; and

- (4) Similarly securing from said distributors in the ports of Baltimore and Philadelphia agreements that sales of tax-free cigarettes to a ship in a particular port when that ship had usually been supplied in the trading area of another port, would be for the account of the distributor operating in the port in which the ship was usually supplied.

Dismissed without prejudice, following denial of appeal of counsel for respondents from an order of the hearing examiner rejecting an

"Amended Stipulation as to the Facts," taken also as including a motion that the Commission dismiss the complaint in the event that the appeal was denied; the Commission being of the opinion that the facts as set forth in said "Amended Stipulation," or if modified as suggested by respondents, did not sustain the allegations of the complaint, that it was highly unlikely that further facts could be elicited were hearings held for that purpose, and that the public interest did not require such hearings to be held; and vacating the order of the hearing examiner setting the matter down for trial.

Before *Mr. Frank Hier*, hearing examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Mr. Harold A. Taft, of Brooklyn, N. Y., and *Mr. John J. Halpin*, of New York City, for respondents.

WILDROOT Co., INC., Buffalo, N. Y., Docket 5928. Complaint, October 9, 1951. Order and opinion, June 30, 1953.

Charge: Paying, or contracting to pay, money, goods, etc., in consideration for services and facilities furnished or contracted to be furnished by some customers, including chain and independent retail drug stores, while not making such payments available on proportionally equal terms, or on any terms at all, to other competing customers, in connection with the processing, handling, interstate offer and sale of "Wildroot" hair preparations, including hair tonic, shampoo and hair net, in violation of the provisions of section 2 (d) of the Clayton Act, as amended, through such practices as—

(1) Paying money amounting up to 5 percent of purchases of "Wildroot Cream-Oil Hair Tonic" and "Wildroot Liquid Cream Shampoo" in consideration of the customer paying said money to its sales clerks in the form of "push money" to promote the sale of said products;

(2) Paying an amount of money equal to 5 percent of net purchases in consideration of the customer maintaining a permanent daily counter and window display and a feature window display once each quarter of aforesaid "Hair Tonic" and/or "Cream Shampoo";

(3) Making available to some customers a cooperative newspaper advertising agreement under which the customer was reimbursed for the entire cost of newspaper advertising of "Wildroot Liquid Cream Shampoo," such advertising to be run as a listing with the customer's own advertisement, the customer being required to display the shampoo on its counters or in its windows, or both, when the advertising was running, and under said agreement paying different amounts

of money to competing purchasers, arbitrarily determined in negotiations with individual customers;

(4) Making available to some customers a cooperative newspaper advertising agreement under which the customer was reimbursed for the entire cost of newspaper advertising of said "Hair Tonic" and "Cream Shampoo," the advertising to be alternated between the two products and to be run as a listing with the customer's own advertisement, and to be accompanied by counter or window displays, and under said agreement paying money limited to 10 percent of purchases of "Wildroot" products during the preceding year, with the suggestion that the customer spend the money in equal portions during each of the four quarters of the year during which the agreement was effective;

(5) Paying money to certain customers in consideration of advertising "Wildroot" products on radio and/or television programs sponsored by them, the amounts in each case being arbitrarily determined in negotiations with individual customers, as were also the services or facilities required to be furnished in each case;

(6) Paying money to certain customers in consideration of advertising respondent's products in connection with a special promotional sale conducted by the customer, for example, making such a payment to a chain retail drug store to cover the cost of circulars sent by direct mail to consumers by the customer—the amount of money and the services and facilities required to be furnished being arbitrarily determined in each case in negotiations with individual customers.

As further alleged in the complaint, respondent, in 1950, made one or more of such types of payments "to each of certain of its customers, a substantial number of which were chain retail drugstores. Said customers comprised approximately one-half of 1 percent of respondent's customers and their total dollar volume of purchases accounted for approximately 20 percent of the total sales of respondent's products. The total of said payments to said customers in 1950 was approximately \$184,000.

Said payments were not available in any amount to thousands of independent retail drugstores, comprising approximately 99½ percent of respondent's customers, many of which compete in the resale of respondent's products with said customers that received payments. During 1950 the total dollar volume of purchases by these customers accounted for approximately 80 percent of the total sales of respondent's products.

Complaint dismissed without prejudice by the following order:

This matter came on to be heard by the Federal Trade Commission upon respondent's petition for an order recalling the matter from the

hearing examiner and dismissing the complaint herein, and briefs in support of and in opposition to said petition. This petition in effect is a motion for reconsideration of the Commission's orders of August 28, 1952, and September 26, 1952, denying respondent's request for leave to appeal from the decision of the hearing examiner herein denying respondent's motion to dismiss. Further consideration is requested on the merits and especially in the light of the Commission's action of January 9, 1953 dismissing six complaints alleging violation of section 2 (e) of the Clayton Act because of a change in Commission's interpretation of section 2 (d) and 2 (e) of that Act.

The Commission, upon a reconsideration of the entire record herein, having decided, for the reasons stated in the written opinion of the Commission which is being issued simultaneously herewith, that the public interest would not be served by further proceedings in this matter at this time:

It is ordered, That the complaint herein be and it hereby is, dismissed without prejudice.

Commissioners Mead and Spingarn not concurring.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Rice E. Schrimsher and *Mr. John H. Bass, Jr.*, for the Commission.

Moot, Sprague, Marcy & Gulick, of Buffalo, N. Y., for respondent.

OPINION OF THE COMMISSION

By *HOWREY, Chairman*:

This is a petition, filed directly with the Commission, to dismiss the complaint. We have treated such petition as an appeal from the ruling of the hearing examiner denying respondent's motion to dismiss.

Respondent Wildroot Co., Inc., moved the hearing examiner to dismiss the complaint upon the grounds: (1) that the matters and practices complained of are adequately covered by the Trade Practice Conference Rules for the Cosmetic and Toilet Preparations Industry, and (2) that respondent has subscribed to such rules, is now in compliance therewith, and intends to continue to comply.

In its petition to the Commission respondent included two further grounds: (1) that no useful purpose can be served by further prosecution of the action in that every result possible to be obtained has already been obtained, and (2) that all practices charged in the complaint have long since been abandoned.

The complaint charges that respondent violated section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act, by paying advertising and other promotional allowances to certain of its customers in the drug trade while failing to make such allowances avail-

able on proportionally equal terms to all of its other customers competing in the sale and distribution of Wildroot hair preparations.

Respondent contends that the practices complained of were discontinued prior to the effective date of the trade practice rules for the industry. There is also in the record the declaration of respondent's vice president and general manager, made under oath, that respondent has no intention of resuming such practices.

Counsel in support of the complaint take the position that the fact the questioned practices have been discontinued "gives no assurance they will not be resumed in the future."

On this point we agree with the hearing examiner who said, "There is no reason to doubt respondent's sincerity in its declaration that it has already ceased and will permanently refrain from use of the practices complained of by the Commission."

The sole question therefore seems to be whether it is in the public interest to continue the proceedings for the purpose of imposing upon respondent a cease and desist order requiring it to discontinue practices which it has already stopped and which it does not intend to resume.

In *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. (2d) 321 (C. A. 7 1944), the court said:

The propriety of the order to cease and desist and the inclusion of a respondent therein must depend on all the facts which include the attitude of the respondent toward the proceedings, the sincerity of its practices and desire to respect the law in the future and all other facts. Ordinarily the Commission should enter no order where none is necessary. This practice should include cases where the unfair practice has been discontinued.

The object of the proceedings is to stop the unfair practice. If the practice has been surely stopped and by the act of the party offending, the object of the proceedings having been attained, no order is necessary, nor should one be entered. If, however, the action of the wrongdoer does not insure a cessation of the practice in the future, the order to desist is appropriate.⁵

The ruling of the hearing examiner clearly shows that he believed the motion to dismiss should have been granted for lack of public interest. However, he felt compelled to deny the motion because of the Commission's policy against settlement of Clayton Act cases by trade practice procedures.

⁵ In a recent opinion of the Supreme Court dealing in part with the abandonment of a practice questioned under another section of the Clayton Act, the Court said: "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. * * * To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." *United States v. W. T. Grant Co. et al.*, 345 U. S. 629, decided May 25, 1953. See also *Oregon-Washington Plywood Co. v. Federal Trade Commission*, 194 F. (2d) 48 (C. A. 9, 1952); *New Standard Publishing Company, Inc., v. Federal Trade Commission*, 194 F. (2d) 181 (C. A. 4, 1952); *Celanese Corp. of America*, 46 F. T. C. 1170 (1950); and *N. Erlanger, Blumgart & Co., Inc.*, 46 F. T. C. 1139 (1950).

The Commission is not under the same compulsion,⁶ nor can such policy infringe on the Commission's discretion to dismiss in cases where the alleged improper practices have been abandoned.

The fact that the issuance of trade practice rules interpreting section 2 (d) of the Clayton Act was a factor in respondent's decision to discontinue, is no reason for refusing to consider the case on the same basis as any other case of discontinuance.

Respondent has stopped the practices. The circumstances do not indicate a likelihood of resumption. Everything that can be accomplished by a cease and desist order has already been accomplished by cooperative effort. In this situation the Commission is of the opinion that the present public interest will be adequately served by dismissing the complaint, without prejudice.

Commissioners Mason and Carretta concur.

Commissioners Mead and Spingarn dissent.

INTERLOCKING DIRECTORATE CASES (WHITIN MACHINE WORKS ET AL., AND THREE OTHERS). On June 30, 1953, following denial of appeals of counsel supporting the complaints from the initial decisions of the hearing examiners dismissing the complaints, and briefs in support of and in opposition thereto, the Commission dismissed four complaints, issued August 7, 1952, in which respondents were charged with violations of section 8 of the Clayton Act, through the having of or serving by the same individual as a director in two or more corporations, competitively engaged, in whole or in part, in interstate commerce, with capital, surplus, and undivided profits, in the case of any one of them, aggregating more than \$1,000,000, and otherwise within the prohibitions of said section; it appearing that in all cases the common directors had given up one of their directorships.

Said cases, in each of which it was alleged, among other things, that for many years respondent corporations, by virtue of their business and location of operation, had been and were competitors, so that the elimination of competition by agreement between them would constitute a violation of a provision of the antitrust laws, follow:

⁶ On January 9, 1953, the Commission dismissed six complaints involving alleged violations by several cosmetic firms of section 2 (e) of the Clayton Act, as amended, by reason of discrimination between purchasers in the supplying of "demonstrator service" (Dockets Nos. 2973, 2974, 3017, 3039, 4435, and 4436). In dismissing the complaints the Commission said:

"Subsequent to the issuance of the complaint and the conclusion of the reception of evidence, the Commission promulgated trade practice rules for the Cosmetic and Toilet Preparations Industry * * *.

* * * The rules * * * specifically provide that one type of service may be offered to some customers and an alternate type to others, and further set out some of the methods by which it may be determined whether a course of conduct results in 'proportionally equal terms' to all customers. None of these provisions were in existence in any form at the time this proceeding was tried.

In making any final decision of this case the Commission would of necessity take into consideration the trade practice rules. The injustice of entering an order to cease and desist upon a state of facts permitted by the rules is apparent."

Whitin Machine Works, Whitinsville, Mass.; *Draper Corp.*, Hopedale, Mass.; and *Phillips Ketchum*, South Natick, Mass., Docket 6023, in which respondent corporations, were engaged in the manufacture and competitive interstate sale and distribution of textile machinery supplies, and in which, as charged, respondent individual was at the same time director of both.

Vick Chemical Co., New York, N. Y.; *Colgate-Palmolive-Peet Co.*, Jersey City, N. J.; and *William R. Basset*, Greenwich, Conn., Docket 6024, in which respondent corporations, as the case might be, manufactured, shipped, and sold in interstate commerce, among other things, household medicinal products, pharmaceuticals and chemicals, cosmetics and toiletries, biologicals, soap, dentifrices, and glycerin; made, shipped, and sold in interstate commerce many of the same classes of products; and were in competition among themselves in the offer, sale, and distribution of such products in commerce, and in which, as charged, respondent individual was at the same time director of both.

Nesco, Inc., Milwaukee, Wis.; *The Ekco Products Co., Inc.*, Chicago; *David G. Baird*, Montclair, N. J.; and *Arthur Keating*, Chicago, Docket 6026, in which respondent corporations were engaged in the manufacture and shipment and competitive interstate sale and distribution of house wares and cooking utensils in interstate commerce, and in which respondent individuals were at the same time directors of both.

Allis-Chalmers Manufacturing Co., and *Chain Belt Co.*, both of Milwaukee, Wis.; *Bucyrus-Erie Co., Inc.*, South Milwaukee; and *Edmund Fitzgerald*, Milwaukee, Docket 6027, in which respondent corporations, as the case might be, manufactured, shipped, and sold in interstate commerce, among other things, farm tractors and other farm equipment, dirt-moving machinery, electrical machinery, processing machinery, chain belts, sprockets, construction machinery, elevating and conveying machinery, power transmission equipment, excavating machinery, floating dredges, internal combustion and diesel power units and cranes, tractor equipment, bulldozers, etc.; made, shipped, and sold in such commerce many of the same classes of products, and were in competition among themselves in the offer, sale, and distribution of such products in commerce, and in which, as charged, respondent individual was at the same time a director in the three respondent corporations.⁷

⁷ Complaint in Docket 6025, *Purity Bakers Corp.*, *American Bakeries Co., Inc.*, *Lewis A. Cushman*, and *George L. Burr*, in which a similar violation of law was charged, pending at the time of the dismissals of the complaints in the four above matters, was later dismissed by the Commission on October 6, 1953, following merger, pending appeal from the initial decision, the Commission then noting, however, that such merger might be subject to question under section 7 of the Clayton Act, and that such phase of the matter was then being explored.

The Commission was represented by *Mr. Paul Rand Dixon* in this group of cases in which hearings were held and respondents represented as follows, to wit:

In the case of *Whitin Machine Works et al.*, before *Mr. J. Earl Coe*, hearing examiner, by *Herrick, Smith, Donald, Farley & Ketchum*, of Boston, Mass.:

In the case of *Vick Chemical Co. et al.*, before *Mr. Abner E. Lipscomb*, hearing examiner, by *Mr. Sherwood F. Silliman*, of New York City, for *Vick Chemical Co.* and *William R. Basset*, and by *Mr. H. W. Reynolds*, of Jersey City, N. J., for *Colgate-Palmolive-Peet Co.*

In the case of *Nesco, Inc., et al.*, before *Mr. Earl J. Kolb*, hearing examiner, by *Mayer, Meyer, Austrian & Platt*, of Chicago, Ill.

In the case of *Allis-Chalmers Manufacturing Co. et al.*, before *Mr. Frank Hier*, hearing examiner, by *Lines, Spooner & Quarles*, of Milwaukee, Wis., for *Allis-Chalmers Manufacturing Co.*, by *Wood, Warner, Tyrrell & Bruce*, of Milwaukee, Wis., for *Chain Belt Co.*, by *Williams, Myers & Quiggle*, of Washington, D. C., and *Mr. Roger Sherman Hoar*, of Milwaukee, Wis., for *Bucyrus-Erie Co., Inc.*, and by *Porter, McIntyre, Johnson & Cutler*, of Milwaukee, Wis., for *Edmund Fitzgerald*.

NELLIE C. CARNEY, trading and doing business as **BLIND SALES Co.**, Washington, D. C., Docket 6058. Complaint, November 18, 1952. Order, June 30, 1953.

Charge: Using misleading trade name and misrepresenting business status or nature; in that respondent, engaged in the interstate offer, sale and distribution of rugs, brooms, mops, leather goods and various household articles, in competition with eleemosynary and charitable institutions, and others, engaged in the sale and distribution of similar goods in commerce, represented through the use of the trade name "Blind Sales Company", and the statement "Giving work to the blind" on sales slips and similar statements made by her agents, that she was engaged in a charitable or eleemosynary enterprise for the benefit of the blind; that the profits derived from the sale of her products were used for the benefit of the blind; and that she gave work to the blind; when in fact none of the profits from such sales were thus used, she did not give work to the blind; and her business was a commercial enterprise operated solely for her profit.

Dismissed, following appeals by respondent and by counsel supporting the complaint, from the initial decision, and upon briefs and oral arguments; it appearing that respondent bought her products from workshops employing the blind, that there was no contention that the products so sold were not actually made by blind persons, and that respondent's gross profit on the business during the year 1952

was \$1,300; and the Commission being of the opinion that the record as a whole did not establish sufficient public interest to warrant the issuance of an order to cease and desist, and that under the circumstances the complaint should be dismissed; thus making unnecessary more specific ruling on respondent's exceptions.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Carl L. Shipley, of Washington, D. C., for respondent.