Syllabus

IN THE MATTER OF

# CONNOLLY SHOE COMPANY

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

*Docket 6084. Complaint, Feb. 19, 1953—Decision, July 28, 1953*

Where a corporate manufacturer of stock shoes for men designated as "Connolly Corrective Arch Shoes," and "Connolly Shoes-Amplifit Last," by means of labels on its shoes, newspaper mats, advertisements in magazine and catalogs of general circulation, and in leaflets and folders—

(1) Represented falsely, directly and by implication, through use of the words "orthopedic," "orthopedic features," "orthopedic heel," and "corrective arch," that its shoes were constructed in such a manner that their use would prevent and cure diseases and abnormalities of the feet, keep feet healthy, and were specially designed to prevent and correct deformities, diseases, and disorders of the feet;

(2) Represented falsely that the wearing of its "Connolly Corrective Arch Shoes" would restore foot health, keep ankles straight, correct and prevent aches and pains that shoot up the back of the leg and give instant relief, and keep healthy feet in good condition; that the metatarsal pad could be changed to meet individual requirements and insured comfort and helpfulness;

(3) Represented falsely that the steel shank in the shoes gave full and proper support to the arch, complete flexibility of the muscles, and freedom of action for the bones of the feet;

(4) Represented falsely that the shoes promoted foot ease and corrected abnormal conditions of the feet; and that certain features in the shoes took away the strains and jars of walking and helped to prevent the agony of tired, aching feet; and

(5) Represented falsely that its "Connolly Shoes—Amplifit Last" were especially conducive to comfort, gave balanced support, and helped to prevent pronation;

When in fact respondent's said shoes were merely stock shoes; while they contained some features not found in some other stock shoes, the effect of such features upon the feet in the prevention or correction of foot ailments or in aiding the natural development of the feet was of no consequence; and the characteristics of the "Connolly Shoes—Amplifit Last," instead of "balanced support," would tend to cause unbalanced support in the case of many wearers:

*Held*, That such acts and practices were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

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

*Mr. B. G. Wilson* for the Commission.

*Merchant & Merchant*, of Minneapolis, Minn., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 28, 1953, the initial decision in the instant matter of hearing examiner Everett F. Haycraft, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1953, issued and subsequently served its complaint in this proceeding upon the respondent, Connolly Shoe Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. On March 23, 1953, respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint and reserved the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII. Thereafter, the proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon said complaint and answer thereto, proposed findings and conclusions submitted by counsel in support of the complaint, no proposed findings having been filed by respondent although it was given an opportunity to do so. Said hearing examiner having duly considered the record herein finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Connolly Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota with its office and principal place of business located at Stillwater, Minnesota.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the manufacture, sale, and distribution in commerce of shoes for men, designated as "Connolly Corrective Arch Shoes," and "Connolly Shoes-Amplifit Last." They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondent causes and has caused its said shoes when sold to be transported from its place of business in the State of Minne-

sota to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of its said shoes in commerce is and has been substantial.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels on its shoes, newspaper mats, advertisements inserted in magazines and catalogs of general circulation, and in leaflets and folders. Among and typical of said statements and representations are the following:

Scientific orthopedic features

Orthopedic heel

Get back the foot health of youth with . . . Connolly's corrective arch shoes

Corrective arch . . . keep ankles straight

No more sore and tired feet. No more aches and pains that shoot up the back of the leg. Here are shoes and oxfords that give you instant relief. They are the best insurance, too, for keeping healthy feet in good condition . . . Connolly corrective arch shoes.

The position of this movable metatarsal pad can be changed to meet any and all individual requirements.

The scientific metatarsal pad . . . insures individual comfort and helpfulness. . . . steel shank gives full support to the arch, yet permits complete flexibility of the muscles and freedom of action for the bones of the feet.

Fitted to the foot—The corrective arch shoe is designed to promote foot ease and to correct abnormal conditions of the arches. Its specifications are scientifically correct. Its distinctive features take away the strains and jars of walking and help to avoid the agony of tired, aching feet.

These Amplifit styles are made with special orthopedic comfort—giving features, . . . gives balanced support and helps prevent pronation.

PAR. 5. Through the use of the words "orthopedic," "orthopedic features," "orthopedic heel," and "corrective arch" to describe its shoes as set forth above, respondent has represented directly and by implication that its said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, and are specially designed to, and will prevent and correct deformities, diseases, and disorders of the feet.

PAR. 6. The said representations are untrue. In truth and in fact the respondent's said shoes are merely stock shoes and are not orthopedic shoes or corrective shoes and are not so constructed as to prevent and they will not prevent or correct deformities, diseases, or disorders of the feet, and they will not keep the feet healthy.

PAR. 7. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented directly and by implication with respect to its "Connolly corrective arch shoes" that the wearing of said shoes will restore foot health, will keep the ankles straight, will correct or prevent sore and tired feet, will prevent aches and pains that shoot up the back of the leg and give instant relief; that the wearing of said shoes will keep healthy feet in good condition; that the metatarsal pad can be changed to meet individual requirements and insures comfort and helpfulness; that the steel shank in the shoes gives full or proper support to the arch, complete flexibility of the muscles and freedom of action for the bones of the feet; that said shoes promote foot ease and correct abnormal conditions of the feet; that certain features in said shoes take away the strains and jars of walking and help to avoid the agony of tired, aching feet.

The respondent has represented with reference to its "Connolly shoes—Amplifit Last" they are especially conducive to comfort, give balanced support, and help to prevent pronation.

PAR. 8. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact respondent's shoes are merely stock shoes made by quantity production methods and, while they contain some features not found in some other stock shoes, the effect of these features upon the feet in the prevention or correction of foot ailments or in the aiding of the natural development of the feet is of no significance.

The wearing of "Connolly corrective arch shoes" will not restore foot health nor keep the feet healthy, will not keep the ankles straight, will not correct or prevent sore and tired feet, and will not prevent nor give relief, instant or otherwise, to aches and pains that shoot up the back of the leg. A stock shoe will not relieve the above named conditions. The wearing of said shoe will not insure healthy feet nor keep them in good condition. The metatarsal pad in the said shoes cannot be changed sufficiently to meet any and all individual requirements or insure comfort and helpfulness, as said pad is not designed or constructed for any particular foot. The said steel shank in respondent's shoe will not correct or prevent defects, deformities, or abnormalities of the feet or the arches, nor will it properly support the arch. It will not permit complete flexibility of the muscles and freedom of action for the bones of the feet. The wearing of said shoes does not promote foot ease or correct abnormal conditions of the feet. There are no features in said shoes which in general will take away the strains and jars of walking, nor can said shoes be depended upon to avoid the agony of tired, aching feet.

There is nothing in the construction of respondent's "Connolly shoes—Amplifit Last" which is conducive to comfort, balanced support, or which will help prevent pronation. In fact, its characteristics will tend to cause unbalanced support in the case of many wearers.

PAR. 9. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes had had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

CONCLUSION

The aforesaid acts and practices of respondent as hereinabove set out are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

*It is ordered*, That the respondent, Connolly Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's shoes designated "Connolly Corrective Arch Shoes" and "Connolly Shoes—Amplifit Last," or any other shoes of similar construction or performing similar functions irrespective of the designation applied thereto, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

(1) From using the words "Orthopedic," "Orthopedic Features," "Orthopedic Heel," or "Corrective Arch," or any other word or words importing a like or similar meaning, alone or in combination with any other word or words to describe or designate said shoes; or using any other word or words in any manner to represent, directly or by implication, that the use of respondent's shoes will prevent or correct deformities, diseases, or disorders of the feet, or will keep the feet healthy;

(2) From representing, directly or by implication, with respect to "Connolly Corrective Arch Shoes"—

(a) that the wearing of said shoes will restore foot health or keep the feet healthy, or will keep the ankles straight, will correct or prevent sore and tired feet, or will prevent or give relief to aches and pains that shoot up the back of the leg;

(b) that the wearing of said shoes will keep healthy feet in good condition;

(c) that the metatarsal pad in said shoes can be changed to individual requirements and insure comfort and helpfulness;

(d) that the steel shank in said shoes will fully or properly support the arch, or permit complete flexibility of the muscles and freedom of action for the bones of the feet;

(e) that the wearing of said shoes will promote foot ease or correct abnormal conditions of the feet;

(f) that the wearing of said shoes will take away the strains and jars of walking or the agony of tired, aching feet;

(g) that the use of respondent's shoes designated "Connolly Shoes—Amplifit Last" is conducive to comfort or will give balanced support, or will help prevent pronation.

ORDER TO FILE REPORT OF COMPLIANCE

*It is ordered*, That the respondent herein 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 the order to cease and desist [as required by said declaratory decision and order of July 28, 1953].

Consent Settlement

IN THE MATTER OF

# AMERICAN BILTRITE RUBBER COMPANY, INC.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

*Docket 6042. Complaint, Sept. 8, 1952—Decision July 29, 1953*

Where a corporation engaged in the manufacture of rubber and other products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and in the competitive interstate sale and distribution of said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, or, as generally known, shoe finders, by whom said products were resold to shoe repair men, retail shoe stores, and retailers of shoe repair and mantenance material;

In selling its said shoe products pursuant to its cumulative volume discount plan whereby it granted discounts, rebates, or allowances from its net selling prices (i. e., list prices less regular trade discount of 25 percent), beginning with 1 percent for a customer whose cumulative purchases during a year ranged from $3,000 to $5,000, 2 percent for such purchases in excess of $5,000, 2½ percent for those in excess of $7,500, and thereafter ranging in five successive steps from 3 percent to 5 percent for purchases ranging from $10,000 to those exceeding $35,000; and thereby in effect directly or indirectly reduced prices charged favored customers to a subtantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including among those thus favored, many who were engaged, in the various trading areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

*Mr. James I. Rooney* and *Mr. James S. Kelaher* for the Commission.

*Schneider, Bronstein & Shapiro*, of Boston, Mass., *Sawyer & Marion*, of Washington, D. C., and *Mr. Herbert A. Lisle*, of New York City, for respondent.

## CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monop-

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on July 29, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Commissioner Howrey not participating and Commissioner Mason dissenting.

olies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission, on the 8th day of September, 1952, issued and subsequently served its complaint on the respondent named in the caption herein, charging it with violation of subsection (a) of Section 2 of the Clayton Act, as amended.

The respondent, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purposes of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of answer to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, is to be withdrawn from the record, hereby:

1. Admits all the jurisdictional allegations set forth in the complaint.

2. Consents that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondent, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrains from admitting or denying that it has engaged in any of the acts or practices stated therein to be in violation of law or that such acts and practices, if engaged in, would be in violation of law.

3. Agrees that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which respondent consents may be entered in final disposition of this proceeding, are as follows:

### COMMISSION'S FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent American Biltrite Rubber Company, Inc., is a Massachusetts corporation with its office and principal place of business located at 22 Willow Street, Chelsea, Massachusetts. Prior to August 21, 1951, said respondent operated under the name Panther-Panco Rubber Company, Inc.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale and distribution of rubber and other products, including a line of rubber and composition heels and soles

and other supplies and materials used in the shoe repair industry, and hereinafter referred to as shoe products.

Said respondent sells said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, known generally as shoe finders. Said shoe finders resell respondent's shoe products to shoe repairmen, retail shoe stores, and to retailers of shoe repair and maintenance materials.

PAR. 3. Respondent causes said shoe products, when sold, to be transported from the places of manufacture at Chelsea and Stoughton, Massachusetts, to purchasers thereof located in various other States of the United States and in the District of Columbia. There is and has been at all times herein mentioned a continuous current of trade and commerce in said products across State lines between respondent's factories and the purchasers thereof. Said products are sold and distributed for use, consumption and resale within the various States of the United States and the District of Columbia.

PAR. 4. 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 firms engaged in the business of selling shoe products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business, as herein set forth, has been since July 1, 1949, and now is, discriminating in price between different purchasers of its shoe products of like grade and quality by selling said products to some of its shoe finder customers at higher prices than to other of its shoe finder customers.

PAR. 6. The discriminations in price referred to in paragraph 5 hereof have been and now are effected pursuant to respondent's cumulative volume discount plan whereby discounts, rebates or allowances are granted from the net selling prices (list prices less regular trade discount of 25 percent) based upon the customer's cumulative total of purchases of shoe products during one year. Said cumulative volume discount plan has the net effect, either directly or indirectly, of reducing prices charged favored customers to a substantially lower amount than those charged other customers for products of like grade and quality.

Effective July 1, 1949, and continuing to the present time, respondent, pursuant to its cumulative volume discount plan, has granted discounts, rebates or allowances based upon the customer's cumulative total of purchases of shoe products during one year in accordance with the following schedule:

| Cumulative annual purchases: | *Percent* |
|---|---|
| Less than $3,000 | None |
| In excess of $3,000 | 1 |
| In excess of $5,000 | 2 |
| In excess of $7,500 | 2½ |
| In excess of $10,000 | 3 |
| In excess of $15,000 | 3½ |
| In excess of $20,000 | 4 |
| In excess of $25,000 | 4½ |
| In excess of $35,000 | 5 |

Many of the favored customers receiving the benefits of the aforesaid discriminations in price are competitively engaged in the resale of said products with other shoe finders who purchase shoe products from respondent and who are not so favored, within the various trading areas in which said favored customers are engaged in business.

PAR. 7. The effect of such discriminations in price, as stated herein, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with customers thereof who receive the benefits of such discriminations.

COMMISSION'S CONCLUSION

The foregoing acts and practices of said respondent as set forth herein are in violation of the provisions of subsection (a) 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).

ORDER TO CEASE AND DESIST

*It is ordered*, That respondent American Biltrite Company, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating in price, directly or indirectly, between different purchasers of said products:

(1) By selling such products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete with the favored purchaser in the resale or distribution of such products;

(2) By selling, in competition with others, such products of like grade and quality to any purchaser at prices lower than to any other purchasers: Provided, however, that the foregoing shall not be con-

strued to preclude respondent from defending absolutely any alleged violation of this provision of the Order by showing that none of the products sold at lower prices were resold by the purchaser at the same level of distribution as were the products sold by respondent at higher prices.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, rebates or allowances, volume or otherwise, and other terms and conditions of sale.

*It is further ordered*, That respondent shall, within sixty (60) days after the 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.

AMERICAN BILTRITE RUBBER COMPANY, INC.,
By (Sgd) ELIOT L. BERNSTEIN,
(Title) *Asst. Secy.*
(Sgd) CLARENCE K. MARION,
*Counsel for Respondent.*

Date: March 9, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record this 29th day of July 1953.

Commissioner Howrey not participating and Commissioner Mason dissenting.

IN THE MATTER OF

# THE B. F. GOODRICH COMPANY

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE CLAYTON ACT, AS AMENDED

*Docket 6043. Complaint, Sept. 9, 1952—Decision, July 29, 1953*

Where a corporation engaged in the manufacture of numerous rubber products, including a line of rubber and composition heels and soles and other supplies and materials used in the shoe repair industry, and in the competitive interstate sale and distribution of said shoe products nationally to shoe manufacturers and to wholesalers of shoe repair materials, or, as generally known, shoe finders, by whom said products were resold to shoe repair men, retail shoe stores, and retailers of shoe repair and maintenance material;

In selling its said shoe products pursuant to its cumulative volume discount plan whereby it granted discounts, rebates, or allowances from its net selling prices (i. e., list prices less regular trade discount of 25 percent), beginning with 5 percent for a customer whose monthly cumulative purchases ranged from $500 to $999, 6 percent for such purchases ranging from $1,000 to $1,999 and ranging thereafter in four successive steps from 7 percent to 10 percent for monthly purchases ranging from $2,000 to those exceeding $5,000 and over; and thereby in effect directly or indirectly reduced prices charged favored customers to a substantially lower amount than those charged other customers—

Discriminated in price between different purchasers of its said shoe products of like grade and quality by selling the same to some of its shoe finder customers at higher prices than to other of its said customers, including among those thus favored many who were engaged, in their various trade areas, in the resale of said products in competition with other shoe finders who purchased such products from it, and who were not thus favored:

*Held*, That such acts and practices, under the circumstances set forth, were in violation of the provisions of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

*Mr. James I. Rooney* and *Mr. James S. Kelaher* for the Commission.

*Kirkland, Fleming, Green, Martin & Ellis*, of Washington, D. C., for respondent.

CONSENT SETTLEMENT [1]

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and mono-

[1] The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

The consent settlement tendered by the parties in this proceeding a copy of which is served herewith, was accepted by the Commission on July 29, 1953, and ordered entered of record as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Commissioner Howrey not participating and Commissioner Mason dissenting.