

Consent Settlement

50 F. T. C.

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.

polies, 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 9th 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 purpose 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 The B. F. Goodrich Company is a New York corporation with its principal office and place of business located at 230 Park Avenue, New York, N. Y.

PAR. 2. Respondent is now and has been for many years last past engaged in the manufacture, sale and distribution 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 hereinafter referred to as shoe products.

Findings

50 F. T. C.

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 place of manufacture at Clarksville, Tennessee, 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 factory 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 manufacturing 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 hereinbefore set forth, has been for more than three years last past, 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 lower 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 so-called cumulative volume discount plan whereby it grants discounts, rebates or allowances from its 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 a specified period. 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 respondent charges other of its customers for products of like grade and quality.

Respondent, pursuant to its cumulative volume discount plan, as heretofore described, has granted discounts, rebates or allowances ranging from none to 10 percent. Since April 1, 1950, and continuing to the present time, respondent has granted discounts, rebates, or allowances based upon the monthly average of the customer's cumulative total of purchases of shoe products, in accordance with the following schedule:

138

Order

Average monthly net purchases:	Percent
Less than \$499-----	None
\$500 to \$999-----	5
\$1,000 to \$1,999-----	6
\$2,000 to \$2,999-----	7
\$3,000 to \$3,999-----	8
\$4,000 to \$4,999-----	9
\$5,000 and over-----	10

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 set forth in Paragraph 5 and Paragraph 6 hereof 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 The B. F. Goodrich Company, 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 construed

Order

50 F. T. C.

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.

THE B. F. GOODRICH COMPANY,
(Sgd) By R. G. JETER,
(Title) _____,

Secretary.

(Sgd) KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS,
(Sgd) By PERRY S. PATTERSON,

Counsel for Respondent.

Date: March 2, 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.

Syllabus

IN THE MATTER OF
THE GOODYEAR TIRE & RUBBER COMPANY, INC.CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a)
OF THE CLAYTON ACT, AS AMENDED*Docket 6044. Complaint, Sept. 9, 1952—Decision, July 29, 1953*

Where a corporation engaged in the manufacture of numerous rubber products, including a line of rubber heels and soles and heels and soles made of an elastomer resin blend called "Neolite," its trademark, and other supplies and materials used in the shoe repair industry, and in the competitive interstate sales 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 sold to shoe repair men, retail shoe stores, or retailers of shoe repair and maintenance material; In selling its said shoe products pursuant to its "quantity bonus plan for shoe products distributors" whereby it allowed to each of its shoe finder customers a volume bonus, payable by merchandise credit on cumulative total of net purchases (total billing less all credits except for transportation and cash discount) of shoe products made by each during the annual period ending June 30, in accordance with a schedule calling for a bonus of 1 percent on cumulative annual purchases ranging from \$5,000 to \$10,000, 2 percent on those ranging from \$10,000 to \$15,000, 2½ percent on those ranging from \$15,000 to \$20,000 and thereafter for bonuses ranging in five successive steps from 3 percent to 5 percent for such purchases ranging from \$20,000 to \$40,000 and over, and, as later modified, for 5 percent for such purchases ranging from \$40,000 to \$60,000, 6 percent for those from \$60,000 to less than \$100,000, and 6½ percent for those of \$100,000 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 were many who were engaged, in the 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 aforesaid described plan, acts and practices were in violation of the provisions of subsec. (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.

Mr. Howard L. Hyde and *Mr. Robert Crafts*, of Akron, Ohio, *Mr. John C. Butler* and *Mr. Walter E. Tinsley*, of Chicago, Ill., and *Mr. Perry S. Patterson*, of Washington, D. C., for respondent.