

IN THE MATTER OF
NATIONAL BLIND INDUSTRIES, INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION

Docket 6036. Complaint, Aug. 29, 1952—Decision, Oct. 20, 1953

Where a non-profit institution serving as a coordinating agency, broker, and clearing house for numerous workshops for the blind, located at various points throughout the United States, included as one of its principal functions the assisting of the Government in locating and procuring desired articles made by the blind and in assisting the various workshops in marketing their products to the Government as well as to private business concerns, charitable institutions, etc., and, as National Industries for the Blind, was a long established and well recognized organization; and thereafter a corporation and an individual, its officer and owner, engaged in the interstate sale and distribution of luminous house numbers and woven articles such as table and place mats, in competition with other corporations and individuals and with eleemosynary and charitable institutions similarly engaged—

- (a) Made use of a corporate name which, as National Blind Industries, Inc., so closely resembled that of National Industries for the Blind as to be confusing to the public and to have the tendency and capacity to cause it to mistake said private business enterprise for the other and thereby cause, or tend to cause, trade and contributions to be diverted unfairly to said private enterprise from the affiliates of National Industries for the Blind; and
- (b) Represented that they had facilities for training blind persons in handicraft and that contributions solicited from the public in connection with the sale of their merchandise would be used to train blind persons and for other rehabilitation work among the blind;

The facts being they had not trained any blind persons and were without facilities so to do; the only blind person in their employ received his training elsewhere, as did others engaged in making various articles sold by said corporation and its owner; and contributions were not otherwise used in rehabilitation work among the blind, but were made use of, as respects the major portion, for other purposes such as commissions of solicitors, salaries of collectors and other employees, rent on their place of business and payments to said owner as income and also on an indebtedness due him by said corporation:

Held: That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and of their competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. William L. Pack*, hearing examiner.
Mr. J. W. Brookfield, Jr., for the Commission.

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 October 20, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 29, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondents of their answers to the complaint, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answers, testimony and other evidence, and proposed findings as to the facts and conclusions submitted by counsel supporting the complaint and by certain of the respondents (oral argument not having been requested); and the hearing examiner, having duly considered the matter, 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 National Blind Industries, Inc., is a corporation organized and doing business under and by virtue of the laws of the District of Columbia, with its place of business located at 1211 "I" Street, N. W., in the city of Washington, District of Columbia. Respondent David A. Ulrey formulates the policies of the corporation and directs and controls all of its practices and activities. While his official title in the corporation is that of Secretary and Treasurer, such title is of no significance as respondent Ulrey is in fact the owner of the business and has complete control over it.

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In the formation of the corporation respondents Walter O. Ulrey and Frances D. Lehman appeared as incorporators along with David A. Ulrey. It also appears that in the organization of the corporation Walter O. Ulrey was elected President and Frances D. Lehman Vice-President. These titles, however, were only nominal, as neither of the two has ever had any part in formulating the policies of the business or directing its activities. Walter O. Ulrey appears to have visited the corporation's place of business only once or twice and he resigned his office in July 1952, having had no connection with the business since that time. Miss Lehman was in the employ of the corporation from approximately the date of its organization in July 1951 to March 1952, her duties being principally of a clerical nature. She has never had any financial investment in the business but received a weekly salary in her capacity as an employee. Her employment was terminated in March 1952, since which time she has been employed in work of an entirely different nature.

In view of these facts it is concluded that no sound basis exists for retaining these two individuals as respondents in the proceeding and the complaint is being dismissed as to them. The word respondents as used hereinafter will therefore include only the corporate respondent and respondent David A. Ulrey unless the contrary is indicated.

PAR. 2. Respondents are and have been engaged in the sale and distribution of luminous house numbers, and woven articles such as table and place mats. Respondents cause and have caused their products, when sold, to be transported from their place of business in the District of Columbia to purchasers located at other points within the District of Columbia and also in the States of Maryland and Virginia.

In the sale and distribution of their products respondents are and have been in substantial competition with other corporations and individuals, and with eleemosynary and charitable institutions, engaged in the sale and distribution of similar products in commerce in the District of Columbia and between and among the various States of the United States.

PAR. 3. In promoting the sale of their products respondents have represented to prospective customers that the articles are made by blind persons, and the first issue raised by the complaint is whether this representation is true. The principal item sold by respondents has been luminous house numbers. The two pieces of wood used in making the numbers are purchased by respondents in pre-cut sizes, one of the two being a small post or stake and the other a small rectangular board. The two pieces of wood are fastened together by a blind worker by means of screws inserted in pre-cut holes, the board being placed crosswise the stake and near the top. To the

board the blind worker affixes metal numerals theretofore purchased by respondents. The entire sign is then painted by the blind worker. The signs are designed to be placed in the front yard of a residence and are made luminous in order that they may be visible at night.

As his compensation the single blind worker who has been engaged in this work receives \$1.00 per sign. The price received by respondents for the finished signs was originally \$2.50 each but later was raised to \$3.50. Sales are solicited over the telephone by persons employed by respondents for that purpose. The signs are delivered and the purchase price collected by still other employees. All of these employees are sighted rather than blind persons.

It is urged in support of the complaint that the work done on the signs by the blind worker constitutes a mere assembling process, and that respondents' representation that the signs are made by the blind is unwarranted and misleading. The examiner rejects this contention. The work done by the blind person constitutes the major portion of the process of making the sign and respondents are warranted in representing the signs as having been made by the blind.

The only other work of a substantial nature done at respondents' place of business is the caning of chairs. It is not disputed that all of this work is done by blind persons, some seven or eight of such persons having at various times been engaged in such work.

In addition to the sale of house numbers and the caning of chairs, respondents have at times sold a few household articles such as woven table and place mats. All of these articles were made by blind persons, although not at respondents' place of business nor by persons in respondents' employ. The articles were made by blind persons in their homes or in institutions for the blind in the District of Columbia.

PAR. 4. In connection with the sale of their merchandise respondents have solicited contributions from the public, representing that they have facilities for training blind persons in handicraft and that such contributions will be used to train blind persons and for other rehabilitation work among the blind. These contributions have been solicited principally over the telephone, calls being made to prospects in the Washington metropolitan area by women employed by respondents for that purpose. The solicitor frequently states to the prospect that she is a member of a "Ladies Committee" engaged in soliciting funds to help the blind. The solicitors usually work on a commission basis, receiving 35% of all funds obtained through their efforts. The actual collecting of the amounts subscribed is done by other employees who usually are employed on a salary basis.

Respondents' representations were unwarranted and misleading. Respondents have not in fact trained any blind persons and are with-

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out facilities for such work. As indicated above, only one blind person has been employed in making the house numbers sold by respondents, and this person received his training elsewhere and before he became associated with respondents. In fact, it appears that this person approached respondents on his own initiative and suggested the house number enterprise. None of the few persons engaged in caning chairs received his training in such work from respondents, all having been previously trained elsewhere. Nor were such contributions otherwise used in rehabilitation work among the blind, the major portion being used for other purposes such as commissions of solicitors, salaries of collectors and other employees, rent on respondents' place of business, and payments to respondent David A. Ulrey as income and also on an indebtedness due him by the corporation.

PAR. 5. The complaint also charges that the name of the respondent corporation, "National Blind Industries, Inc.," is in and of itself false and misleading, one of the reasons assigned for this charge being that the name so closely resembles that of another organization that its use by respondents has the tendency and capacity to confuse and mislead the public. The other organization in question is the "National Industries for the Blind" which has its headquarters in New York City. This organization, which is a non-profit institution, serves as a coordinating agency, broker and clearing house and numerous workshops for the blind which are affiliated with it and which are located at various points throughout the United States. The United States Government is frequently in the market for numerous articles made by the blind, and one of the principal functions of National Industries for the Blind is to assist the Government in locating and procuring the articles desired, and to assist the various workshops in marketing their products to the Government as well as to private business concerns, charitable institutions, etc. National Industries for the Blind is a long established and well recognized organization, its origin having antedated that of respondent corporation by many years.

The examiner finds that this charge in the complaint is well founded. The name of the corporate respondent, National Blind Industries, Inc., so closely resembles that of National Industries for the Blind as to be confusing to the public and to have the tendency and capacity to cause the public to mistake respondent corporation for National Industries for the Blind, thereby causing, or having the tendency and capacity to cause, trade and contributions to be diverted unfairly to respondents from the affiliates of National Industries for the Blind. Unlike National Industries for the Blind

and its affiliates, respondent corporation is not a non-profit institution but is a private business enterprise.

PAR. 6. The complaint appears to charge also that, irrespective of the similarity between the name of respondent corporation and that of National Industries for the Blind, the corporate name is misleading. The allegations of the complaint in this respect are that "Through the use of the corporate name 'National Blind Industries, Inc.' respondents represent that said corporation is a charitable or eleemosynary institution devoted exclusively to the interests of the blind and operating at the national or nation wide level; that all the articles sold and offered for sale by them are made by blind persons and that the business is conducted for the benefit of the blind." There appears to be no evidence in the record, certainly no substantial evidence, indicating that the corporate name represents or connotes all of these things to the public, and the examiner is of the view that the name cannot reasonably be so construed. The name does represent or imply that the articles offered for sale by respondents are made by blind persons but, as heretofore pointed out, this representation is true.

PAR. 7. The acts and practices of the respondents as set forth in Paragraphs Four and Five have the tendency and capacity to confuse, mislead and deceive a substantial portion of the public as to respondents' business and its facilities, and the tendency and capacity to cause such members of the public, as a result of such confusion and misunderstanding, to make purchases from and contributions to respondents which they would not otherwise make. In consequence, substantial trade has been diverted unfairly to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents as set forth above are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent National Blind Industries, Inc., a corporation, and its officers, and respondent David A. Ulrey, individually and as an officer of said corporation, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribu-

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tion of house numbers, woven goods or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from :

1. Representing, directly or by implication, that respondents have facilities for training, or that they do train, blind persons.

2. Representing, directly or by implication, that contributions received from the public will be used to train or rehabilitate the blind or otherwise used for the benefit of the blind.

3. Using as a part of respondents' corporate or trade name the words "National Blind Industries," or any other word or combination of words substantially similar to the name "National Industries for the Blind."

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Walter O. Ulrey and Frances D. Lehman.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents, National Blind Industries, Inc., a corporation, and David A. Ulrey, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of October 20, 1953].

Syllabus

IN THE MATTER OF
HOLTITE MANUFACTURING COMPANY AND CAT'S PAW
RUBBER COMPANY, INC. ET AL.

DECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. (A) OF THE
CLAYTON ACT, AS AMENDED

Docket 5828. Complaint, Nov. 7, 1950—Decision, Oct. 22, 1953

Where the largest manufacturer of rubber heels and soles in the United States, engaged in the competitive interstate sale and distribution, nationally, of a line of its said products under its nationally advertised brand name "Cat's Paw" and various other brand names, including customers' private brands, to wholesalers of shoe repair materials, or shoe finders, and to operators of chain shoe repair shops in department stores throughout the United States, to retailers of shoe repair and maintenance materials, and to independent shoe repair shops—

- (a) Discriminated in price between different purchasers of rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to other of its customers, through granting discounts, volume or otherwise, rebates, and allowances on sales to favored customers, including shoe finders and large operators of chain shoe repair shops, competitively engaged either with other shoe finders or with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased rubber heels and soles and findings either from said manufacturer or from shoe finder-customers of it, or from whomsoever purchased, within the various trading areas in which said favored customers were engaged in business, and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one per cent to as high as about twenty per cent; and

Where (1) an individual businessman; and (2) a corporation, and various individuals, its officers and stockholders, partners in an associated and common enterprise; which were engaged in the interstate sale and distribution at wholesale of leather and rubber shoe repair materials and other products classified as findings, such as shoe polish, saddle soap, nails, laces, heel plates, shoe machinery, and other products and materials used in the repair, rebuilding, alteration, servicing, cleaning, or preservation of shoes, slippers, sandals, boots, and similar footwear products, were among the largest shoe finders in the Chicago, Illinois, area and sold to independent and chain operators, shoe repair shops, retail shoe stores, and to retailers of shoe repair and maintenance materials, in competition with other shoe finders who purchased leather and rubber shoe repair materials and findings from manufacturers or suppliers thereof for resale within the various trading areas in which said respondents offered and sold said products; and said manufacturer—

- (b) Jointly and severally discriminated in price between different purchasers of rubber heels and soles and findings, of like grade and quality, made by said manufacturer, by selling said products to some of their customers at

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substantially higher prices than they sold such products of like grade and quality to others of their customers through granting discounts, volume or otherwise, rebates, and allowances, to favored customers, particularly large operators of chain shoe repair shops, competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased rubber heels and soles and findings from said respondents or from whomsoever purchased, within the various trading areas in which said favored customers were engaged and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one per cent to as high as about fifty per cent; and

Where aforesaid individual shoe finder, engaged as above set forth—

- (c) Discriminated in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to others of its customers, through granting discounts, rebates, or allowances to favored customers, particularly large operators of chain shoe repair shops, which were competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased leather and rubber heels and soles and findings from said individual shoe finder or from whomsoever purchased, within the various trading areas in which said favored customers were engaged in business, and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices thereby brought about, ranging from one per cent to as high as about twenty per cent; and

Where said second shoe finder group, i. e., said corporation and its officer and stockholder partners, associated as above set forth—

- (d) Discriminated in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sold such products of like grade and quality to others of its customers through granting discounts, rebates, or allowances to favored customers, particularly large operators of chain shoe repair shops, competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchased leather and rubber heels and soles and findings from said group enterprise or from whomsoever purchased within the various trading areas in which said favored customers were engaged in business and who did not receive the benefit of such discriminatory discounts, etc., and the substantially lower prices and discriminations thereby brought about, ranging from one percent to as high as about twenty percent; Effect of which discrimination in price, as above set forth, might be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents and their purchasers were respectively engaged, or to injure, destroy, or prevent competition with said respondents or with customers of theirs who received the benefits of such discriminations:

Held, That such alleged acts and practices of said respondents, as above set forth, constituted violations of Subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. James I. Rooney and Mr. James S. Kelaher for the Commission.
Gordon & Feinblatt, of Baltimore, Md., for Holtite Manufacturing Co., Cat's Paw Rubber Co., Inc., Morris Eisen, Larry L. Esterson and Albert A. Esterson.

Mr. I. Leonard Kovitz, of Chicago, Ill., for Jack Klinger.
Lederer, Livingston, Kahn & Adsit, of Chicago, Ill., for K. Kaplan Sons & Co., Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon.

ORDERS AND DECISION OF THE COMMISSION

Order denying respondents' appeal from initial decision of hearing examiner and decision of the Commission and order to file report of compliance, Docket 5828, October 22, 1953, follows:

This matter came on to be heard by the Federal Trade Commission upon an appeal by all of the respondents herein with the exception of Jack Klinger from the initial decision of the hearing examiner, briefs in support of and in opposition to said appeal and oral argument thereon, an order granting leave to respondents to show cause why the form of order contained in the initial decision should not be entered as the order to cease and desist of the Commission, respondents' objections stated in answer to said order to show cause, and answer of counsel supporting complaint in opposition to said objections.

The record herein consists of a complaint and respondents' answers admitting all of the material allegations of fact. These answers were filed by respondents after an agreement had been reached between them and counsel supporting the complaint as to the form of proposed order which would be urged by all counsel. It was clearly understood, however, that the Commission was not bound to issue its order to cease and desist in the form proposed. The hearing examiner in his initial decision varied from the form of the proposed order by omitting from its provisos which, in effect, state that the defenses of cost justification and of meeting the equally low price of a competitor are available to respondents under the order. Respondents appealed from this initial decision on the ground that the exclusion of these provisos took from them substantial rights to which they are entitled. Further objection was made to the entry of any order to cease and desist herein prior to disposition by the Commission of the cases in Docket Nos. 6042, 6043, 6044, and 6045, involving competitors' pricing practices.

Respondents' contention that the omission of the provisos from the order is erroneous is of no merit. The Supreme Court of the United States in *Federal Trade Commission v. The Ruberoid Co.*, 343 U. S.

470 (1952) stated that such provisos are necessarily implicit in every such order of the Commission. However, as stated by that court, the implicit availability of these defenses does not allow respondents to relitigate issues already decided by the proceeding before the Commission which resulted in the order to cease and desist. Thus, the only difference between the proposed order and the order adopted by the hearing examiner is that the proposed order would allow respondents to relitigate on the questions of meeting competition and cost justification in a proceeding for violation of the order on the same facts as considered herein. The Commission is of the opinion that the order contained in the initial decision provides the more adequate relief from the complained of practices and is proper in all respects.

As to respondents' contention that no order should be issued herein until its disposition of the cases in Docket Nos. 6042, 6043, 6044, and 6045 involving competitors' pricing practices, the Commission, on August 5, 1953, issued its decision accepting a consent settlement containing an order to cease and desist in each of these cases. The basis for this objection, therefore, has been eliminated.

The Commission, therefore, being of the opinion that respondents' grounds for appeal are of no merit and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That respondents' appeal from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner shall, on the 22d day of October 1953, become the decision of the Commission.

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision, a copy of which is attached hereto.

Commissioners Howrey and Carretta not participating for the reason that oral argument on respondents' appeal from the initial decision was heard prior to their appointment to the Commission.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

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 November 7, 1950, issued and subsequently served its com-

plaint in this proceeding upon Holtite Manufacturing Company, a corporation, Cat's Paw Rubber Company, Inc., a corporation, Morris Eisen, Larry L. Esterson, and Albert A. Esterson, individually and as officers of said two corporations; upon Jack Klinger, an individual doing business as A. Leveton Company; and upon K. Kaplan Sons and Company, a corporation, Rudolph E. Kaplan and Eli E. Kaplan, individually and as officers thereof, Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon, individually and as copartners doing business as Reick, Langendorf and Company, a partnership, charging them with violation of subsection (a) of section 2 of said Act as amended. Time within which to file answer, as fixed in the complaint, was, by the trial examiner, enlarged for respondents Holtite Manufacturing Company and Cat's Paw Rubber Company, Inc., and the individuals named as their officers, but all the remaining respondents filed answers on December 4, 1950. Thereafter, on January 4, 1951, respondents Holtite Manufacturing Company, Cat's Paw Rubber Company, Inc., Morris Eisen, Larry L. and Albert A. Esterson filed answer through counsel admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts. On January 12, 1951, the remainder of the named respondents, with the exception of Jack Klinger, through counsel filed motion to withdraw their answer filed December 4, 1950, and to substitute therefor an amended answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts, which motion was granted by the trial examiner and said amended answer filed. On January 24, 1951, respondent Jack Klinger through counsel filed motion to withdraw answer dated December 4, 1950, and to substitute amended answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to the facts, which motion was granted by the trial examiner, the amended answer filed and the record closed.

Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer, and amended answers thereto and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order :

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Holtite Manufacturing Company is a Maryland corporation with its office and principal place of business located at Warner and Ostend Streets, Baltimore, Maryland.

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Respondent Cat's Paw Rubber Company, Inc., is a Maryland corporation with its office and principal place of business located at Warner and Ostend Streets, Baltimore, Maryland, and is a wholly owned subsidiary of respondent Holtite Manufacturing Company.

Respondents Morris Eisen, Larry L. Esterson, and Albert A. Ester-son are individuals and are President, Vice President, and Secretary-Treasurer, respectively, of respondent Holtite Manufacturing Company and are Secretary-Treasurer, Vice President, and President, respectively, of corporate respondent Cat's Paw Rubber Company, Inc. Said individual respondents formulate, control, and direct the policies, practices, and methods of said corporate respondents. All of the respondents named in this paragraph are hereinafter referred to jointly and severally as respondent Cat's Paw.

PAR. 2. Respondent Jack Klinger is an individual doing business under the trade name and style of A. Leveton Company, hereinafter referred to as respondent A. Leveton Company, with his office and principal place of business located at 711 West Roosevelt Road, Chicago, Illinois.

PAR. 3. Respondent K. Kaplan Sons and Company is an Illinois corporation with its office and principal place of business located at 711 North Milwaukee Avenue, Chicago, Illinois.

Respondents Rudolph E. Kaplan and Eli E. Kaplan are individuals and are President and Secretary-Treasurer, respectively, of respondent K. Kaplan Sons and Company, and as such formulate, control, and direct the policies, practices, and methods of said respondent corporation.

The aforesaid individual respondents Rudolph E. Kaplan and Eli E. Kaplan, together with individual respondents I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack, and Edwin Kardon, own all of the capital stock of K. Kaplan Sons and Company, and are copartners doing business under the firm name and style of Reick, Langendorf and Company with its office and principal place of business located at 31 South Wells Street, Chicago, Illinois. All of the respondents named in this paragraph are hereinafter referred to jointly and severally as respondent K. Kaplan.

PAR. 4. Respondent Cat's Paw is now and has been since June 19, 1936, engaged in the manufacture, sale, and distribution of a line of rubber heels and soles and allied products used in the shoe repair industry. Respondent Cat's Paw is the largest manufacturer of rubber heels and soles in the United States.

Said respondent sells and distributes its products principally under the nationally advertised brand name "Cat's Paw," and also under various other brand names, including customers' private brands.

Said products are sold nationally to wholesalers of shoe repair materials, known generally as shoe finders; and to operators of chain shoe repair shops located in department stores throughout the United States, retail shoe stores, retailers of shoe repair and maintenance materials, and independent shoe repair shops.

Respondent Cat's Paw causes said products, when sold, to be transported from the place of manufacture at Baltimore, Maryland, to the purchasers thereof located in the various 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 manufacturing plant and purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and in the District of Columbia.

PAR. 5. Respondents A. Leveton Company and K. Kaplan, since June 19, 1936, have been and are now engaged in the sale and distribution at wholesale of leather and rubber shoe repair materials, and other products classified as findings, such as shoe polish, saddle soap, nails, laces, heel plates, shoe machinery, and other products and materials, all for use in the repair, rebuilding, alteration, servicing, cleaning, or preservation of shoes, slippers, sandals, boots, and similar footwear products. Said respondents, generally known as shoe finders, are among the largest shoe finders in the Chicago, Illinois, area and sell to independent and chain operated shoe repair shops, retail shoe stores and to retailers of shoe repair and maintenance materials.

Said respondents cause said products, when sold, to be transported from the points of origin of shipments to the purchasers thereof located in the various 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 the points of origin of shipment and the purchasers of such products. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and in the District of Columbia.

PAR. 6. In the course and conduct of its business, as aforesaid, respondent Cat's Paw is now and during the times herein mentioned has been in substantial competition with other corporations and firms engaged in the business of manufacturing, selling, and distributing materials and findings used in the shoe repair industry, and with shoe finders engaged in the business of selling and distributing said products in interstate commerce. Respondents A. Leveton Company and K. Kaplan, in the course and conduct of their business, as aforesaid, are now and during the times herein mentioned have been in

substantial competition with other shoe finders who purchase leather and rubber shoe repair materials and findings from manufacturers or suppliers thereof for resale within the various trading areas in which respondents offer for sale and sell said products.

PAR. 7. Respondent Cat's Paw, in the course and conduct of its business, as hereinbefore set forth, has been since June 19, 1936, and now is discriminating in price between different purchasers of rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, volume or otherwise, rebates and allowances on sales to favored customers, including shoe finders and large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers on products of like grade and quality. Said discriminations in price vary in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged either with other shoe finders or with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase rubber heels and soles and findings either from respondent Cat's Paw or from shoe finder-customers of respondent Cat's Paw, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 8. Respondent Cat's Paw and respondents A. Leveton Company and K. Kaplan, jointly and severally, in the course and conduct of their business, as hereinbefore set forth, are now and during the times herein mentioned have been discriminating in price between different purchasers of rubber heels and soles and findings, of like grade and quality, manufactured by respondent Cat's Paw, by selling said products to some of their customers at substantially higher prices than they sell such products of like grade and quality to others of their customers.

The aforesaid discriminations in price are effected by granting discounts, volume or otherwise, rebates and allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than said respondents, jointly and severally, charge others of their customers for products of like grade and quality. Said discriminations in price

vary widely and range from one percent to as high as approximately fifty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase rubber heels and soles and findings from respondents named herein, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 9. Respondent A. Leveton Company in the course and conduct of its business, as hereinbefore set forth, has been during the times herein mentioned and now is discriminating in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, rebates or allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers for products of like grade and quality. Said discriminations in price vary widely in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase leather and rubber heels and soles and findings from respondent A. Leveton Company, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 10. Respondent K. Kaplan, in the course and conduct of its business, as hereinbefore set forth, has been during the times herein mentioned and now is discriminating in price between different purchasers of leather and rubber heels and soles and findings, of like grade and quality, by selling said products to some of its customers at substantially higher prices than it sells such products of like grade and quality to others of its customers.

The aforesaid discriminations in price are effected by granting discounts, rebates or allowances to favored customers, particularly large operators of chain shoe repair shops, which have the net effect, either directly or indirectly, of reducing said customers' prices to a substantially lower amount than respondent charges others of its customers for products of like grade and quality. Said discriminations

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in price vary widely in amount and range from one percent to as high as approximately twenty percent.

The favored customers receiving the aforesaid discriminations in price are competitively engaged with other shoe repair shops, retail shoe stores, and retailers of shoe repair and maintenance materials who purchase leather and rubber heels and soles and findings from respondent K. Kaplan, or from whomsoever purchased, within the various trading areas in which said favored customers are engaged in business.

PAR. 11. The effect of such discriminations in price as set forth in Paragraph 7, Paragraph 8, Paragraph 9 and Paragraph 10 hereof may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents named herein and their purchasers are respectively engaged; or to injure, destroy or prevent competition with respondents named herein or with customers of aforesaid respondents who receive the benefits of such discriminations.

CONCLUSION

The foregoing alleged acts and practices of said respondents, as herein found, constitute violations of subsection (a) 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.

ORDER

It is ordered, That respondents Holtite Manufacturing Company, a corporation, Cat's Paw Rubber Company, Inc., a corporation, K. Kaplan Sons and Company, a corporation, their officers, agents, representatives and employees, respondents Morris Eisen, Larry L. Esterson, Albert A. Esterson, Rudolph E. Kaplan and Eli E. Kaplan, individually and as officers of the named corporations, their representatives, employees and agents, respondent Jack Klinger, doing business as A. Leveton Company, or under any other name, his agents, employees and representatives, and respondents Rudolph E. Kaplan, Eli E. Kaplan, I. Gilbert Kaplan, Sidney Kaplan, Rubin Chupack and Edwin Kardon, individually and as partners doing business under the name of Reick, Langendorf and Company, a partnership, or under any other partnership or firm name, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of leather and rubber heels and soles, leather and rubber shoe repair materials and other products known commercially as findings, such as shoe polish, saddle soap, nails, laces, heel plates and shoe machinery, in commerce,

as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist, severally, jointly or with any other individual, firm or corporation, directly or indirectly, from discriminating in price between different purchasers of said products by selling products of like grade and quality to any purchaser at prices lower than those granted other purchasers who in fact compete, or whose customers compete, with the favored purchaser or purchasers, in the resale or distribution of such products.

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

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist * * * [as required by aforesaid order and decision of the Commission.]

IN THE MATTER OF
SAXONY WOOL CORPORATION OF NEW YORK ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND THE WOOL PRODUCTS LABELING ACT

Docket 6114. Complaint, Aug. 7, 1953—Decision, Oct. 29, 1953

Where a corporation and its president, engaged in the interstate sale and distribution of wool products as defined in the Wool Products Labeling Act,

- (a) Misbranded certain knitted clips—in that, labeled as (1) "Wool Cashmere" and (2) "96% Wool Cashmere, 4% Cotton and Rayon," they were in fact composed substantially of fibers other than the fleece of the Cashmere goat;
- (b) Misbranded said products in that they were not stamped, tagged, or labeled as required by said Act and more particularly, in that the labels did not give the percentage of the alleged cashmere fiber:

Held, That such acts and practices, under the circumstances set forth, were in violation of said Wool Products Labeling Act and said Rules and Regulations, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Henry D. Stringer for the Commission.

Weisman, Allen, Spett & Sheinberg, of New York City, for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939 the Federal Trade Commission, on August 7, 1953, issued and subsequently served its complaint on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Acts.

The respondents, 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 hereby:

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 October 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.

1. Admit all the jurisdictional allegations set forth in the complaint.
2. Consent 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 said respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree 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 the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Saxony Wool Corporation of New York, is a corporation duly incorporated under the laws of the State of New York. Respondents, Ralph Rubinger and Ann Rivlin, are president and secretary, respectively, of such corporation. Ralph Rubinger formulates, directs, and controls the acts, policies, and practices of such corporate respondent. The offices and principal place of business of such corporate respondent, and Ralph Rubinger and Ann Rivlin are located at 7 Vestry Street, New York, New York.

PAR. 2. Respondent, Ann Rivlin, has filed an affidavit herein, setting forth that she has never at any time during her tenure as secretary of respondent corporation, participated in the management, direction, or control thereof, and has never formulated, directed, nor controlled the acts, policies, and practices complained about.

By reason of the matters set out in said affidavit the Commission finds that the said complaint, insofar as it relates to the respondent, Ann Rivlin as an individual, should be dismissed.

PAR. 3. Subsequent to the effective date of the Wool Products Labeling Act of 1939 and more especially since 1951, said respondents, other than Ann Rivlin, have manufactured or caused to be manufactured for introduction into commerce, introduced or caused to be introduced into commerce, sold, offered for sale, transported, distributed, and delivered for shipment, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products, as "wool products" are defined therein.

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PAR. 4. Certain of said wool products were misbranded within the intent and meaning of Section 4 (a) (1) of the Wool Products Labeling Act of 1939, and the Rules and Regulations thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified as to the character and amount of the constituent fibers contained therein.

More particularly the misbranded wool products aforementioned were woolen stocks, that is, fibrous materials made from knitted clips, labeled or caused to be labeled by the respondents as (1) "Wool cashmere," and (2) "96% Wool cashmere, 4% cotton and rayon" and the use by the respondents of the labels aforesaid had a substantial tendency to cause purchasers thereof to believe that, in the first instance, such woolen stocks were composed entirely of the hair or fleece of the Cashmere goat, and, in the second instance, of 96% hair or fleece of the Cashmere goat; whereas, in fact, such woolen stocks were composed substantially of fibers other than the hair or fleece of the Cashmere goat.

PAR. 5. Certain of said wool products were misbranded in that they were not stamped, tagged, or labeled as required under the provisions of Section 4 (a) (2) of the Wool Products Labeling Act of 1939, and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

More particularly the said wool products were misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and Rule 19 of the Regulations thereunder in this, that the labels referred to in Paragraph Four did not give the percentage of the alleged cashmere fiber present therein.

PAR. 6. The respondents assert that the acts and practices complained of herein were discontinued by them on or before May 1, 1953, and have not been engaged in by respondents since that time.

CONCLUSION

The acts and practices of respondents, Saxony Wool Corporation of New York, a corporation, and Ralph Rubinger, individually, as hereinbefore found, were and are in violation of the Wool Products Labeling Act of 1939, and the Rules and Regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Saxony Wool Corporation of New York, a corporation, and its officers, and Ralph Rubinger in-

dividually, and respondents' respective representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution, in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fibrous stocks, or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool" or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

- (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

- (b) The maximum percentage of the total weight of such wool product of any nonfibrous loading, filling, or adulterating matter;

- (c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as containing hair or fleece of the Cashmere goat when such is not the fact;

4. Stamping, tagging, labeling, or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label, or other identification the percentage of such cashmere therein.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of Section 3 of the Wool Products Labeling Act of 1939; and

Provided further, That nothing contained in this order shall be

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construed as limiting any applicable provisions of said Act or the Rules and Regulations promulgated thereunder.

It is further ordered, That the complaint herein insofar as it relates to Ann Rivlin, individually, be, and the same is hereby dismissed, it being understood, however, that this action shall not be construed to prevent the application of this order to the said Ann Rivlin as an officer of the Saxony Wool Corporation of New York.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Saxony Wool Corporation of New York,
a corporation.

(Sgd) By Ralph Rubinger, Pres.

(Sgd) Ralph Rubinger

Ralph Rubinger, individually.

(Sgd) Ann Rivlin

Ann Rivlin, individually.

Date: October 7, 1953.

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

Decision

IN THE MATTER OF
PAGE DAIRY COMPANYDECISION IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF THE
CLAYTON ACT, AS AMENDED

Docket 5974. Complaint, Mar. 27, 1952—Decision, Oct 30, 1953

Where an Ohio corporation engaged in the manufacture, processing, and distribution of fluid milk and dairy products and in the transportation and sale at wholesale of homogenized milk from its Ohio processing plant to various cities, towns, and trading areas in Indiana and in Michigan, in competition with other dairies, mostly locally owned, in each of said trading areas—

- (a) Discriminated in price between its Ohio purchasers and its Indiana and Michigan purchasers by charging the former higher prices for milk of like grade and quality than it charged its latter purchasers; and
- (b) Discriminated in price in the interstate sale of its homogenized milk among its purchasers located in Indiana and Michigan by charging some of such purchasers higher prices than it charged other purchasers located in said States for milk of like grade and quality, through charging one cent more for its quart cartons of its homogenized Vitamin D milk which was so labeled than it charged for such milk sold in quart cartons not so labeled:

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

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

Mr. William H. Smith, Mr. James I. Rooney, and Mr. James S. Kelaher for the Commission.

Shumaker, Loop & Kendrick and *Mr. Roland H. Rogers*, of Toledo, Ohio, 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 October 30, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19,