

IN THE MATTER OF
THE B. F. GOODRICH CO.

Docket 5677. Complaint, July 8, 1949—Decision, Jan. 24, 1954

Charge: Discriminating in price by selling rubber and canvas footwear to some customers at higher prices than to others competitively engaged with the former in the resale of said products, in violation of subsection 2 (a) of the Clayton Act, as amended.

Before *Mr. Webster Ballinger*, hearing examiner.

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

Mr. G. T. Kilmon and *Mr. R. G. Jeter*, of Akron, Ohio, and *Kirkland, Fleming, Green, Martin & Ellis*, of Washington, D. C., for respondent.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached decision of the hearing examiner shall, on January 24, 1954, become the decision of the Commission.

Commissioner HOWREY not participating.

INITIAL DECISION BY WEBSTER BALLINGER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 8, 1949, issued and subsequently served its complaint in this proceeding upon the respondent The B. F. Goodrich Company charging it with having since June 19, 1936, violated and now violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936. After the filing and service of said complaint respondent answered. Issues joined hearings were thereafter held at which testimony and other evidence in support of the allegations of the complaint and in opposition thereto were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission. The testimony and other evidence offered and admitted were duly filed and recorded in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing upon a motion by counsel for respondent, uncontested by counsel for the complaint, to dismiss the complaint, and the Examiner after a careful review of the entire record finds that this proceeding is not in the interest of the public.

The complaint charges respondent with having since June 19, 1936, violated and "now" violating the provisions of subsection (a) of

Section 2 of the Clayton Act as amended by the Robinson-Patman Act by "discriminating in price between purchasers of its rubber and canvas footwear of like grade and quality in so selling said products to some of its customers at higher prices than it sells such products of like grade and quality to other of its customers who are competitively engaged one with the other in the resale of said products within the United States." It is further charged that the effect of the discriminations in price "has been or may be substantially to lessen, injure, destroy or prevent competition in the sale and distribution of rubber and canvas footwear between those of respondent's purchasers who receive the benefits of such discriminations and competing purchasers who do not receive the same benefits." The discrimination in price, it is charged, is effectuated through quantity discounts depicted in 10 quantity discount brackets set forth in the complaint.

Respondent denied that it had or was violating the provisions of the statute referred to and pleaded "cost justification" for the quantity discounts set forth in the ten brackets it allowed purchasers.

After the taking of approximately 650 pages of testimony and the introduction of a number of exhibits, the hearings were arrested to afford Commission accountants an opportunity to make a more thorough examination of the books and records of the respondent than was made prior to the issuance of the complaint, which resulted in a stipulation wherein it is stated:

"* * * that all price differences are * * * cost justified, excepting therefrom the 13% discount from list price bracket in relation to other higher discounts applicable to waterproof footwear."

"* * * that the total sales made by respondent pursuant to its price policy in the said 13% discount from list price bracket amounted to substantially less than $\frac{1}{2}$ of 1% of the total sales of waterproof footwear made by respondent for the year 1949." (The last full year referred to in the complaint.)

There can be no public interest, and the Commission would not be warranted, in pursuing an inquiry relating to a discount bracket affecting such an insignificant proportion of respondent's business from which no possible substantial injury to competitors could result.

The motion to dismiss recites the above facts and counsel for the complaint make no objection to the granting of the motion.

It is therefore ordered, That the complaint be and it is hereby dismissed.

Order

50 F. T. C.

IN THE MATTER OF
STANDARD MOTOR PRODUCTS, INC.

Docket 5721. Order and opinion, Jan. 29, 1954

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

Mr. Eldon P. Schrup, Mr. James E. Corkey and Mr. Francis C. Mayer for the Commission.

Mr. Edward S. St. John, of New York City, for respondent.

ORDER DISPOSING OF APPEALS FROM ORDERS OF THE HEARING EXAMINER

This matter having come on to be heard by the Commission upon appeals, under Rule XVI of the Commission's Rules of Practice, by P. Sorensen Manufacturing Co., Inc., P. and D. Manufacturing Co., Inc., and the respondent, Standard Motor Products, Inc., from orders of the hearing examiner pertaining to certain subpoenas duces tecum issued by him at the request of the respondent; and

The Commission having duly considered said appeals, briefs of counsel, and pertinent portions of the record herein, and being of the opinion, for the reasons appearing in the accompanying opinion of the Commission, that the appeals of P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., should be sustained and that the appeal of the respondent, Standard Motor Products, Inc., should be denied, and being of the further opinion that oral argument on the appeals, which was requested by P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., is unnecessary:

It is ordered, That the said appeals of P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., be, and they hereby are, granted, and that the requests for oral argument on said appeals be, and they hereby are, denied.

It is further ordered, That the said appeal of respondent Standard Motor Products, Inc., be, and it hereby is, denied.

It is further ordered, That the subpoenas duces tecum issued by the hearing examiner on October 19, 1953, directing P. Sorensen Manufacturing Co., Inc., and P. and D. Manufacturing Co., Inc., to produce specified documents and records be, and they hereby are, quashed, but with the understanding that, if respondent so requests, new subpoenas, limited as indicated in the accompanying opinion, will be issued.