

Complaint

IN THE MATTER OF
FRANK F. TAYLOR COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (A)
OF THE CLAYTON ACT AS AMENDED*Docket 6198. Complaint, Mar. 26, 1954—Decision, July 29, 1954*

Consent settlement order requiring a manufacturer of baby walker-strollers and children's three-wheel velocipedes to cease discriminating in price in the sale of its products through favoring mail order houses and chain automotive supply stores, for example, over other competing customers.

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

Mr. Peter J. Dias and *Mr. Rice E. Schrimsher* for the Commission.

Frost & Jacobs, of Cincinnati, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Frank F. Taylor Company is violating and has violated the provisions of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Frank F. Taylor Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2801 Highland Avenue, Cincinnati, Ohio.

PAR. 2. Respondent is now and, since June 19, 1936 has been engaged in the manufacture of baby walker-strollers and children's three wheel velocipedes, and has sold and now sells such products to different purchasers located in the various States of the United States and the District of Columbia for use, consumption, or resale therein. In connection with such sales respondent transports said products, or causes the same to be transported, from Cincinnati, Ohio, to said purchasers so located, thereby creating a continuous current of commerce in said products.

PAR. 3. The respondent, in the course and conduct of its business, has been and is in competition with other corporations, individuals, partnerships and firms engaged in manufacturing, selling and distributing said products in commerce between, and among the various States of the United States and the District of Columbia.

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Respondent's purchasers are competitively engaged in the resale of its products at retail in the various territories and places where said purchasers respectively carry on their business. Included among such purchasers are mail order houses, department stores, chain automotive supply stores, drug stores, infants' stores and hardware stores.

PAR. 4. In the course and conduct of its business, as above-described, respondent has sold and now sells its products to some of said purchasers at higher prices than it has sold and now sells such products of like grade and quality to other of said purchasers. Respondent's favored purchasers are now, and have been, competing with its non-favored purchasers in the resale of said products.

An example of the discrimination involved herein is found in connection with sales of the two most popular items of baby walker-strollers sold by respondent. The prices charged a few favored purchasers, such as mail order houses and chain automotive supply stores, as compared with the prices charged the many other competing purchasers are set forth below. The prices charged said other competing purchasers vary according to the quantity of respondent's products purchased in a single order as indicated. The price paid by the favored purchasers is the same regardless of quantity purchased. The prices set forth below, effective during 1952, are per unit, f. o. b. Cincinnati, Ohio:

	1 to 11 pieces (assorted)	12 to 23 pieces (assorted)	24 pieces or more (assorted)
<i>Model No. P-45</i>			
Price to favored purchasers.....	\$5.20	\$5.20	\$5.20
Price to other purchasers.....	\$6.57	\$6.24	\$5.92
Price discrimination:			
Dollars per unit.....	1.37	1.04	.72
Percent per unit.....	20.8	16.7	12.2
<i>Model No. P-55</i>			
Price to favored purchasers.....	\$6.15	\$6.15	\$6.15
Price to other purchasers.....	\$7.77	\$7.38	\$6.99
Price discrimination:			
Dollars per unit.....	1.62	1.23	.84
Percent per unit.....	20.9	16.7	12

PAR. 5. The effect of such discriminations in price made by respondent, as set forth in Paragraph 4 hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent and its purchasers who receive the benefit of such discriminations.

PAR. 6. The foregoing acts and practices of the respondent, as above alleged, violate Section 2 (a) of the Clayton Act, as amended, (U. S. C. Title 15, Sec. 13).

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 29, 1954, 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

The complaint in this matter charges respondent with price discrimination in violation of Section 2 (a) of the Clayton Act, as amended. Since the issuance and service of the complaint and the filing of respondent's answer thereto, a stipulation has been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the answer heretofore filed by respondent shall be withdrawn; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission to which respondent may be entitled under the Clayton Act, as amended, or the rules of practice of the Commission; and that the order hereinafter set forth may be entered in disposition of this proceeding, such order to have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon, respondent specifically waiving any and all right, power or privilege to challenge or contest the validity of such order.

The stipulation is hereby accepted and made a part of the record herein, and the following order issued:

ORDER

It is ordered that respondent Frank F. Taylor Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale or distribution of its products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products:

By selling such products of like grade and quality to any purchaser thereof at a higher price than the price charged any other purchaser or purchasers who in fact compete with the nonfavored purchaser in the sale and distribution of such products.

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

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 29, 1954].

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IN THE MATTER OF

ANTHONY W. HAGEDORN DOING BUSINESS AS BUCHANAN HEARING AID COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6205. Complaint, May 5, 1954—Decision, July 30, 1954

Consent settlement order requiring a seller of devices represented to be hearing aids to cease advertising falsely the qualities or acceptance of said products and from "bait" advertising in the sale of the devices.

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

Mr. John J. McNally for the Commission.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Anthony W. Hagedorn, an individual, doing business as Buchanan Hearing Aid Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Anthony W. Hagedorn is an individual doing business as Buchanan Hearing Aid Company with his principal place of business located at 726 Fourteenth Street, N. W., Washington, D. C.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale of devices represented to be hearing aids, to members of the purchasing public. In the course and conduct of said business, respondent causes some of said devices when sold, to be transported from his place of business located in the District of Columbia to the purchasers thereof located in the District of Columbia and in adjacent states, and maintains, and at all times mentioned herein has maintained, a course of trade in commerce among and between the various States of the United States.

PAR. 3. Among the various devices sold by respondent as aforesaid is the "Dahlberg Tru-Sonic Canal Earphone," a device, as "device" is defined in the Federal Trade Commission Act, which is so

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designed that a part thereof is inserted into the ear canal. The complete device consists of a tip, a length of plastic tubing, an adaptor and a receiver, plus a wire cord with a plug attachment.

PAR. 4. In the course and conduct of his business as aforesaid, respondent has disseminated, and caused the dissemination of, advertisements concerning said device by the United States Mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to advertisements inserted in newspapers, circulars and other advertising media for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said device.

Respondent has also disseminated and caused the dissemination of advertisements concerning said device by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the statements contained in said advertisements, disseminated as aforesaid, are the following:

HARD OF HEARING?

NEW Dahlberg Tru-Sonic

Canal Earphone

Yesterday's dream—today's reality

(depiction of a human ear with a device inserted into the ear canal. A diagram indicates the placement of the device in the ear canal through use of the letters A, B and C)

Dahlberg
Hearing Aids
are accepted by
the American
Medical Association

You'll thrill to a new and different hearing experience when you hear with the Dahlberg Tru-Sonic Canal Earphone. The new canal earphone (A) with soft, air-light tube and foam rubber tip (B) so small, it's hidden within ear canal (C)—so near eardrum (D) gives amazing hearing power.

Out of Sight! No earmold!

Fits any ear—all hearing aids.

PAR. 5. Through the use of the aforesaid statements and others of the same import not specifically set forth herein, respondent represented that the "Dahlberg Tru-Sonic Canal Earphone" will fit the ear canals of all persons and when inserted therein will be hidden or out of sight; that the device is so constructed as to fit all hearing aids and that it has been accepted by the American Medical Association.

PAR. 6. The said advertisements are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, the "Dahl-

berg Tru-Sonic Canal Earphone" will not fit the ear canals of all persons and when inserted therein will not be hidden nor out of sight. Said device is not so constructed as to fit all hearing aids and has not been accepted by the American Medical Association.

PAR. 7. The use by respondent of the aforementioned false and misleading statements and representations had the tendency and capacity to induce a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of the respondent's devices by reason of such erroneous and mistaken belief.

PAR. 8. In the course and conduct of his business, respondent, through the use of newspapers, radio broadcasts, circulars disseminated through the United States mails, and other forms of advertising, has made certain other statements respecting the devices offered by him and the prices thereof.

Among and typical, but not all-inclusive of the statements made by respondent, as aforesaid, were the following:

SUPER POWER HEARING

WITH	(depiction of a human hand with a
THE	small disk-like object about the size of
NEW	a dime held between the thumb and forefinger)

Actual size of receiver

ELECTRONIC RECEIVER FOR HEARING AID USERS

This tiny receiver will take the place of Old Fashioned Hearing Air Receivers. Yes, it is true! We now offer the world's first real aid-powered receiver small enough to fit INSIDE your ear. Sound is heard in the most natural way ever invented for the hard of hearing * * * \$19.50 full price.

* * * * *

STOP BEING DEAF!

Remarkable *New* Hearing
Discovery

(depiction of a policeman holding up
a disproportionately large hand)

(arrow bearing the phrase "All you need"! pointing to a depiction of a thin fork-shaped device, the tines of which are rounded and the stem of which appears to pierce through a disc to a coil-shaped terminal)

Here is the sensational new hearing aid that your friends don't see. No cords—no batteries—no plastic tubes—no box of any kind. Improve your appearance—be comfortable—at ease—get a new lease on life. \$39.50 complete * * *

* * * * *

I'm very deaf but I HEAR everything with my new TRU-SONIC Hearing Aid.

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Read what Mrs. Gladys Jones, Washington mother, says:

I am very deaf. I have worn hearing aids for 20 years. Some of the most expensive models on the market. Believe me, I know the trials, discomforts, irritation and embarrassment of wearing the average hearing aid—no matter how costly. Now I wear TRU-SONIC, the hearing aid which operates on a brand new principle of electronics, and I hear better than I did in 20 years! Best of all TRU-SONIC cost only \$39.50—Just about one-fifth of most hearing aids.

Won't you hard-of-hearing folks let me send you the complete TRU-SONIC story? It's FREE, fascinating—and could revolutionize your life as it did mine! * * *

* * * * *

Revolutionary New TRU-SONIC D-2 Hearing Device

WEAR NOTHING

In your ear except this tiny device

39.50
FULL PRICE

TRU-SONIC ATTACHMENT
WHERE DEAFNESS STRIKES

... not a gadget!
... not a come on!
... but a truly fine complete hearing aid
... unseen on women
... inconspicuous on men
... as low as 1.25 per week
... low down payment
... free tryout

(depiction showing a human ear with a device inserted in the ear canal and a cross-section of the various tissues comprising the human auditory system. Said device appears to consist of a series of six centered, rounded blocks of varying size and thickness, the portion closest to the eardrum being disk-shaped)

Fitted utterly unlike old fashioned hearing aids. The most modern ear attachment of today * * * the TRU-SONIC CANAL EARPHONE pictured above. A hearing aid you'll be proud to own. Better hurry! Supplies are limited! * * *

* * * * *

PAR. 9. Through the use of the statements set forth in Paragraph 8 hereof, and others of similar import not specifically set forth herein, respondent represented, directly or by implication, that he was making a bona fide offer to sell the devices referred to or described in said advertisements.

PAR. 10. The aforesaid representations were false, misleading and deceptive. In truth and in fact, respondent's said offers were not bona fide offers to sell the devices referred to or described in said advertisements. On the contrary, respondent's said offers were made for the purpose of developing leads as to prospective purchasers of different or more expensive devices than those referred to or described in said advertisements.

In numerous instances persons attracted by respondent's advertisements, upon visiting respondent's place of business or upon being

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visited by respondent or his sales people in their homes or offices, were informed by respondent or his salespeople in effect, that the advertised devices would not aid their hearing, were not as described in the advertisements, or were not desirable as hearing aids. Respondent or his salespeople often failed to even demonstrate said devices to prospective purchasers, but attempted to and did describe, demonstrate and in many instances sold, different or more expensive devices than those described or referred to in said advertisements, to such persons, many of whom would not have contacted respondent except for the representations made in said advertisements.

PAR. 11. Respondent's false and misleading statements and representations, set forth in Paragraphs Eight through Ten hereof, had the tendency and capacity to induce members of the purchasing public to contact respondent, and to purchase devices which they would not have otherwise purchased from respondent except for such practices.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

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 30, 1954, the initial decision in the instant matter of hearing examiner James A. Purcell, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 5, 1954, issued and subsequently served its complaint upon respondent, Anthony W. Hagedorn, an individual doing business as Buchanan Hearing Aid Company, engaged in the sale of hearing aid devices, with his principal place of business located at No. 726 Fourteenth Street, Northwest, Washington, D. C.

On June 23, 1954, there was filed with the Federal Trade Commission a stipulation between the parties for a consent order, which stipulation appears of record in these formal proceedings. By the terms thereof the parties agree that the complaint and said stipulation shall constitute the entire record herein; that respondent admits all of the jurisdictional allegations set forth in the complaint; that both

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parties waive the making of findings of fact or conclusions of law by the Hearing Examiner or by the Commission; that respondent waives the right to file exceptions or to demand oral argument before the Commission, as well also all further and other procedure before the Hearing Examiner or the Commission to which, but for the execution of said stipulation, respondent may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Said stipulation further recites that it was executed for settlement purposes only, does not constitute an admission by respondent of violation of law as alleged in the complaint, and that said complaint may be used in construing the terms of the order herein, which order may be altered, modified or set aside in the manner provided by law.

On the basis of the foregoing the undersigned Hearing Examiner concludes that this proceeding is in the public interest and, in conformity with the action therein contemplated and agreed, makes the following order:

ORDER

It is ordered that respondent Anthony W. Hagedorn, an individual doing business as Buchanan Hearing Aid Company, or under any other name, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the device designated as the "Dahlberg Tru-Sonic Canal Earphone," or any device of substantially similar character, whether sold under the same or any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated by means of the United States Mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication that said device:

- (a) will fit the ear canal of all persons;
- (b) is hidden and out of sight when inserted in the ear canal;
- (c) will fit all hearing aids;
- (d) has been accepted by the American Medical Association.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph (1) above.

It is further ordered that respondent, Anthony W. Hagedorn, an individual doing business as Buchanan Hearing Aid Company, or under any other name, and respondent's agents and employees, directly

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or through any corporate or other device, in connection with the offering for sale, sale and distribution of hearing aids or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that hearing aids or other merchandise are offered for sale when such offer is not a bona fide offer to sell the merchandise so offered.

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 30, 1954].

IN THE MATTER OF
WOODY FASHIONS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT

Docket 6123. Complaint, Sept. 21, 1953—Decision, Aug. 3, 1954

Where a manufacturer of wool products—

- (a) Misbranded certain ladies' coats which contained none of the hair of the Cashmere goat as "Imported Cashmere and All Wool, Exclusively Blended", "Exclusively Blended, Wool and Cashmere, 80% Wool, 20% Cashmere", etc.; and
- (b) Misbranded certain of said coats labeled as "Imported Cashmere and All Wool, Exclusively Blended", in that it failed to set out the percentage, by weight, of cashmere contained therein:

Held, That such misbranding of wool products was in violation of the Wool Products Labeling Act of 1939 and constituted unfair and deceptive acts and practices in commerce.

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

Mr. Henry D. Stringer for the Commission.

Ducker & Feldman and *Mr. Samuel R. Friedman*, of New York City, for respondents.

DECISION AND OPINION OF THE COMMISSION

This matter has come before the Commission upon respondents' appeal from the initial decision of the hearing examiner which concludes that they have violated the Wool Products Labeling Act of 1939 by falsely labeling ladies' wool coats as containing cashmere. Briefs in support of and in opposition to the initial decision have been filed. Oral argument has not been requested.

In support of their appeal respondents take exception to rulings of the hearing examiner excluding reports of tests by Adolph Marklin and by Josephine V. Lawida of the content of certain of the material in question. They were rejected by the hearing examiner because the person making the tests were not present as witnesses and available for cross-examination as to the contents of the reports. The report of the tests by Josephine V. Lawida was identified by Arthur B. Coe, Chief Microscopist for the United States Testing Company, Inc., who was her superior. He testified that he did not participate in the actual testing and could not recall whether or not he had examined respondents' fabric at all. Similarly, as set out in detail in the initial deci-