

IN THE MATTER OF
UNITED STATES STEEL CORPORATION ET AL.

Docket 6078. Order and opinion, Sept. 24, 1954

Order denying appeal of steel drum manufacturers from hearing examiner's adverse ruling on their request for an order authorizing an informal stipulation-agreement in settlement of the charge of unlawful combination and agreement to fix prices of steel drums; and granting in part respondents' motion for a bill of particulars.

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

Mr. Fletcher G. Cohn, Mr. James I. Rooney, Mr. Paul R. Dixon, Mr. Everette MacIntyre and Mr. William A. Mulvey for the Commission.

Mr. Thomas Lynch, of New York City, and *Mr. L. L. Lewis, Mr. Merrill Russell, Mr. John C. Bane, Jr. and Reed, Smith, Shaw & McClay*, of Pittsburgh, Pa., for United States Steel Corp. and United States Steel Co.

Mr. J. Theodore Ross, of Pittsburgh, Pa., for Jones & Laughlin Steel Corp. and Jones & Laughlin Steel Barrel Co.

Mayer, Froedlich, Spiess, Tierney, Brown & Platt, of Chicago, Ill., for Inland Steel Co. and Inland Steel Container Co.

Mr. Gordon W. Mallatratt, of Richmond, Calif., and *Dickler & Halbert*, of New York City, for Rheem Manufacturing Co.

Mr. Thomas F. Patton, Mr. Harold C. Lumb and Mr. William J. De Lancey, of Cleveland, Ohio, for Republic Steel Corp.

ORDER RULING ON RESPONDENTS' APPEALS AND DIRECTING COUNSEL
SUPPORTING THE COMPLAINT TO FURNISH CERTAIN INFORMATION

This matter having come on for hearing upon the respondents' appeal dated October 26, 1953, from the hearing examiner's order of October 15, 1953, and the appeal additionally filed by them on November 5, 1953, from the hearing examiner's order of October 28, 1953, denying respondents' joint motion for a bill of particulars and upon the briefs and other memoranda filed in support of and in opposition to such appeals and oral arguments of counsel; and

The Commission having duly considered the appeals and having determined, for reasons stated in the accompanying opinion, that the appeal dated October 26, 1953, should be denied and that the appeal filed on November 5, 1953, should be granted in part and denied in part:

It is ordered that respondents' appeal of October 26, 1953, from the hearing examiner's order of October 15, 1953, be, and the same hereby is, denied.

It is further ordered that respondents' appeal from the hearing examiner's order of October 28, 1953, denying respondents' request for a bill of particulars be, and the same hereby is, granted in part and denied in part as noted in this order and in the accompanying opinion.

It is further ordered that counsel in support of the complaint be, and he hereby is, directed to file in this proceeding, on or before the 29th day of October, 1954, a statement disclosing the period of time to be covered by the evidence to be offered by him in the course of his case-in-chief and additionally identifying illustrative drums among a representative number of product types which he will contend have been designated or adopted by the respondents as "standard" for pricing purposes.

Commissioner Mead dissenting to the extent that he would deny both appeals filed by respondents.

OPINION OF THE COMMISSION

By Carretta, Commissioner:

Presented for our determination here are two interlocutory appeals filed by the respondents prior to the reception of evidence in this proceeding. The appeals challenge adverse rulings made by the hearing examiner on motions which were filed by the respondents.

Under the first of these interlocutory appeals, respondents urge in effect that the Commission issue an order authorizing or permitting counsel supporting the complaint to proceed to negotiate in settlement of this proceeding a stipulation agreement with respondents under which respondents will agree to limit or discontinue voluntarily such acts or practices as may be agreed upon, defined and described in that agreement. In denying respondents' similar request directed to him, the hearing examiner stated that the Commission's statement of policy as promulgated through the Federal Register of August 29, 1947, in reference to settlement of cases by trade practice conference and stipulation agreements constitutes an expression that the privilege of settling formal cases through such agreements will not be extended by the Commission to respondents charged with suppression or restraint of competition through conspiracy or monopolistic practices. In support of their appeal here, respondents contend, among other things, that it is probable that frank discussions between counsel of the issues may satisfy counsel supporting the complaint that there is no justification for a charge of conspiracy or other deliberate violation of law and that negotiation and acceptance of an agreement on respondents' part voluntarily to limit or discontinue practices defined,

described and agreed upon would reduce unnecessary delay and expense resulting from litigating this matter.

It does not appear that questions pertaining to the Commission's policy expression on settlement of cases under the trade practice conference and stipulation procedures have been presented heretofore for the Commission's consideration directly through the medium of an interlocutory appeal under Rule XX of the Commission's Rules of Practice, and the matters to which the appeal of October 26, 1953, relates, therefore, must be regarded as novel. Without passing upon the question as to whether this appeal properly lies within Rule XX of the Commission—because oral argument herein was heard—we accordingly are of the view that respondents' appeal should be considered and ruled upon by the Commission.

The complaint in this proceeding alleges that respondents, for many years last past and continuing to the time of its issuance, have acted unlawfully to suppress and prevent competition by entering into and carrying out an understanding and planned common course of action, and pursuant thereto formulated and put into effect certain practices, methods and policies under which they agreed, among other things, to fix and maintain uniform base prices, uniform price differentials, and uniform terms and conditions of sale in the offering for sale and distribution in commerce of their steel drums. The acts and practices alleged in the complaint to have been engaged in, manifestly fall within the category of matters involving suppression or restraint of competition through conspiracy or monopolistic practices and the privilege of settling formal cases of this type through stipulation agreements is foreclosed in the Commission's statement of policy referred to above.

In formulating and publishing its policies in reference to the settlement of cases under the trade practice conference and stipulation procedures, the Commission published simultaneously also an explanation of the considerations underlying their adoption and stated that the cooperative procedures afforded for the settlement of cases as noted should never be permitted as an easy escape for willful violators of the laws administered by the Commission or for avoiding or delaying the effectiveness of its corrective action. The circumstance that the explanatory statement additionally contained an assertion that conspiracies and monopolistic practices are, with few exceptions, deliberately engaged in for the purpose of restraining competition and with knowledge of their illegality and that violations of this type frequently also are criminal violations of the Sherman Act serves in no manner to suggest that, under the Commission's policy, inquiry

or negotiations might be carried on and proceedings suspended in order to appraise the motives inspiring formation and adoption of the alleged conspiracy or monopolistic practices all directed to ascertaining if an agreement voluntarily to discontinue the acts or practices could be negotiated and properly accepted in the circumstances. We are of the view that the hearing examiner correctly interpreted the Commission's here pertinent statement of policy to preclude settlement of cases through the cooperative procedures there referred to when the practices charged involve suppression or restraint of competition through conspiracy or monopolistic practices. Respondents' appeal of October 26, 1953, accordingly is deemed to be without merit.

The other or companion appeal challenges the hearing examiner's order denying respondents' joint motion for a bill of particulars. Respondents contend that the complaint inadequately informs as to the period of time to which the alleged combination or conspiracy relates and fails to define or limit properly the specific acts and practices to which the complaint is directed. They submit also that it fails to identify the agents through whom the alleged agreements were entered into or the time or times to which the evidence will relate, and these asserted omissions, respondents urge, improperly deny them the right to reasonable notice of the charges and adequate opportunity to meet such charges. Among other things, respondents additionally state in this connection that, while such information as they now possess indicates that the particular practices to which the complaint is addressed originated many years ago and were carried on during 20 years or more, any inquiry embracing this period by respondents into their corporate records and corporate records of predecessors no longer in existence would entail great expense and would be needlessly wasted should counsel supporting the complaint have in mind presenting evidence only with respect to a more recent period, one beginning, for example, in 1945.

Respondents' motion for a bill of particulars as directed to the hearing examiner was not filed until more than eight months after service of the complaint in this proceeding. During the intervening period, however, pursuant to requests on behalf of counsel for respondents, the hearing examiner on ten occasions granted extensions of time within which to file answers, the last of which extended the time therefor until October 16, 1953. Respondents' answers were submitted and filed with the Commission on the same day that counsel for respondents filed with the hearing examiner their joint motion for a bill of particulars. In circumstances thus characterized by delay in submitting the original motion and considering the fact that

the complaint in this proceeding clearly states a cause of action, the Commission perhaps might be warranted in summarily rejecting this application for leave to appeal.

We have decided, nevertheless, that this appeal should be duly considered on its merits in order to ascertain if the hearing examiner's ruling on that motion was a correct ruling. One of the charges to which challenge was directed in the motion below is subparagraph (1) of paragraph 8, which alleges that the respondents have agreed to adopt and maintain uniform "standards," or specifications, for pricing purposes and respondents in effect urged below that the failure to identify any of such standards or specifications in the charges contributes to prejudicing their preparations for the defense. Although this charge serves to state a cause of action and therefore must be regarded as valid from that standpoint, it can be concluded that the failure to identify the drums mentioned more particularly needlessly might place an undue burden on the respondents incident to investigation and preparing their defense as to this aspect of the proceeding. The probability of undue investigatory expense in such connection would be greatly reduced if counsel supporting the complaint were to furnish to respondents information identifying typical drums among a representative number of product types which he will contend have been designated or adopted through agreement as "standard" for the purpose aforementioned. Our accompanying order directs that counsel supporting the complaint furnish information in that respect and the respondents' appeal is to this extent being granted.

Turning now to consideration of other charges which allege, among other things, that respondents have agreed to fix and maintain uniform base prices, differentials, terms and conditions of sale, these matters are closely related to additional charges to the effect that the respondents have agreed to adopt, maintain and utilize a pricing formula or mathematical device there described in detail allegedly in order to calculate price revisions and to fix and maintain prices. With respect to these charges, the Commission is of the view that the complaint clearly is legally sufficient and fairly apprises respondents with respect to the acts and practices charged. The hearings of the Commission are held at intervals, a respondent is not required to proceed with his defense until after completion of the case-in-chief, and the absence of additional particulars as to these charges will not here deprive respondents of reasonable notice or adequate opportunity to meet the charges.

This conclusion, notwithstanding, the Commission is not in a position to gainsay counsel's statement that substantial expense may be incurred by respondents incident to investigating their files back 20, 30 or more years to the time when respondents state they now believe various of the practices referred to in the complaint originated. Should it come about, as respondents suggest, that counsel supporting the complaint has in mind presenting evidence only with respect to some more recent period, some of the expense incident to thus examining their records might be considered unnecessary expense. The probability of such undue expense, if any, would be obviated if counsel supporting the complaint were to furnish information as to the period of time to be covered by the evidence which will be offered by him in the course of the case-in-chief. Considerations of fairness, therefore, warrant that counsel supporting the complaint be directed likewise to furnish this information.

Nothing contained herein should be interpreted to mean that counsel in support of the complaint may not bring the evidence up to date and introduce evidence of relevant and material facts occurring subsequent to the date of the complaint.

Commissioner Mead dissents to the extent that he would deny both appeals filed by respondents.

IN THE MATTER OF
HUDSON GARMENT CO., INC., ET AL.

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

Docket 6219. Complaint, June 23, 1954—Decision, Oct. 1, 1954

Consent order requiring a New York manufacturer to cease representing falsely, by affixing markings, insignia, etc., resembling those used by the U. S. Armed Forces, that their Armed Services type jackets and outer garments were manufactured for the U. S. Armed Forces and in accordance with their specifications.

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

Mr. Terral A. Jordan for the Commission.

Mr. I. Arthur Rosenberg, of New York City, for respondents.

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 Hudson Garment Co., Inc., a corporation, and Samuel Zigman, Simon Ginsberg, and Pearl Zigman, individually and as officers of said corporation, hereafter referred to as respondents, have 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 Hudson Garment Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 600 Broadway, New York, New York. Respondents Samuel Zigman, Simon Ginsberg and Pearl Zigman are respectively president, treasurer and secretary of said corporate respondent. These individuals acting in cooperation with each other formulate, direct and control all of the policies, acts and practices of said corporation. The address of said individual respondents is the same as that of said corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the manufacturer, sale and distribution of heavy outerwear, including Armed Services type garments, in commerce, among and between the various States of the United States and in the District of Columbia. Respondents maintain, and at all