

Complaint

51 F. T. C.

IN THE MATTER OF
WOOSTER RUBBER COMPANY

CONSENT ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. 2 (d)
AND 2 (e) OF THE CLAYTON ACT AS AMENDED

Docket 6216. Complaint, June 23, 1954—Decision, Oct. 31, 1954

Consent order requiring a manufacturer of "Rubbermaid" kitchen and household accessories and automobile mats in Wooster, Ohio, to cease exceeding its limitation of 5% of purchases in making allowances for newspaper advertising to some of its customers while adhering to it in others; and to cease furnishing demonstrator services to various customers at costs bearing no proportional relationship to their purchases.

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

Mr. William H. Smith for the Commission.

Critchfield, Critchfield, Critchfield & Johnston, of Wooster, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent, named in the caption hereof, hereinafter designated and referred to as "respondent," has violated and is now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act (U. S. C. Title 15, Section 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, Wooster Rubber 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 Wooster, Ohio.

PAR. 2. Respondent operates a factory at Wooster, Ohio, and since 1934, has been engaged in the manufacture of rubber kitchen and other household accessories. Respondent also manufactures rubber mats for use in automobiles. Its 1952 sales amounted to \$10,171,394. Respondent markets its products under its trade name "Rubbermaid."

PAR. 3. Respondent has two principal methods of distribution for its household and kitchen products. It maintains salesmen in various districts who sell direct to department stores and large houseware

stores. Respondent also sells to distributors and jobbers who resell to retail stores who generally purchase in small quantities at a time. Respondent sells its rubber mats for automobiles to automobile companies and automobile accessory stores.

PAR. 4. In the course and conduct of its business, respondent transports its said products, or causes the same to be transported from the State and place of manufacture to its customers and purchasers thereof located in States and places other than the State of manufacture; and there is now, and has been for many years last past, a constant current of trade and commerce in said products between and among the various States of the United States and the District of Columbia.

PAR. 5. Respondent has promulgated an "Advertising Agreement," which it makes available to all of its customers who desire to advertise respondent's products in newspapers. Under this contract, and in consideration of the purchase of respondent's merchandise, respondent agrees to pay and allow 50% of the cost of newspaper space devoted to the advertisement of its products under respondent's trade name "Rubbermaid." The agreement further provides that the actual cost of the space used is to be equally divided between the advertiser and respondent, provided respondent's share does not exceed 5% of the advertiser's net purchases during the calendar year.

PAR. 6. Respondent, in applying the terms of its "Advertising Agreement," as referred to in Paragraph 5 herein, at times does not limit its payment and allowances for newspaper advertising to 5% of purchases, as provided by said agreement; but, in many cases, exceeds this 5% limitation in the case of some of its customers, while adhering to said limitation in the case of others of its competing customers. As illustration, respondent allowed one of its larger customers in excess of 10% of net purchases. Said agreement and the payments and allowances made by respondent thereunder for newspaper advertising as between some of respondent's competing customers are, therefore, not made on proportionally equal terms.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are in violation of Section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act.

Count II

PAR. 8. Paragraphs 1 to 4, inclusive, of Count I hereof, are hereby repeated and made a part of this Count as fully and with the same force and effect as though here again set forth in full.

PAR. 9. Respondent has promulgated a program for the furnishing of demonstrators in the stores of its retail customers. The program is contained in a written contract entered into on an annual basis and is denoted by respondent "Rubbermaid Retail Representative Program."

The essential contract provisions appear to be as follows:

The stated objective of the program is to reach a minimum annual "Rubbermaid" sales volume of \$20,000 retail—\$12,000 at store cost. The contract states that it is established upon the mutual agreement of respondent and the customer. The contract further provides, in effect, that a "Rubbermaid Retail Representative" or demonstrator of "Rubbermaid" products, shall be selected by both respondent and the customer. It is agreed that the salary of the demonstrator will be established at an amount conforming to the customer's usual wage policies. Depending on store preference, the demonstrator's salary will be paid either by respondent direct, or indirectly, through the customer paying the demonstrator's salary, which will then debit respondent periodically with the cost thereof. In addition, respondent, by its contract, agrees to pay the demonstrator a commission of 1% of the store's net "Rubbermaid" purchases. It is agreed that the demonstrator will be free to concentrate her time on the "Rubbermaid" line and insofar as is practicable, will not be required to perform duties not pertaining to the store's "Rubbermaid" counter display, "which, by virtue of its size and location will be of positive value in reaching the sales goal of the program," and to maintain the basic inventory at all times, as specified in the agreement.

PAR. 10. To those of its store customers which desire to avail themselves of respondent's "Rubbermaid Retail Representative Program," as described in Paragraph 9 herein, respondent allows a discount of 40% from list on all of its products purchased by the store, including the basic stock order, while to other of its store customers, which do not avail themselves of respondent's demonstrator offer, respondent allows a discount on purchases of 40% plus 5% off list.

PAR. 11. Respondent's demonstrator contract, as hereinbefore described, contains no rule or formula for the computation of the amounts respondent is to pay or contribute to any of its customers for the employment and use of demonstrators, and no rule or formula whereby the value of the services furnished by respondent or contributed to by it may be measured or determined, whereby the terms of such payments made or such services contributed to by respondent to its customers who avail themselves of respondent's demonstrator service will be proportionally equal. Nor does respondent in its ap-

plication of the terms and provisions of said agreement do so upon terms that are proportionally equal as between its competing customers and purchasers.

Many of respondent's competing customers are furnished demonstrator services by respondent at a cost to respondent which has no proportional relationship as between such customers to the purchases of respondent's products by such customers from respondent; nor are such services proportionalized by respondent upon any other legal basis as between many of its competing purchasers. On the contrary, respondent's said demonstrator agreement, as interpreted and applied by respondent among and between its various competing customers, partakes of the nature of a personal negotiation by respondent with each purchaser availing itself of said service, and is tailored to suit each individual's desire, rather than upon terms which are proportionally equal to all competing purchasers.

PAR. 12. The aforesaid acts and practices of respondent, as herein alleged, are in violation of Section 2 (e) of the Clayton Act, as amended by the Robinson-Patman 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 October 31, 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 violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended. 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 filing of an answer to the complaint is waived and that the complaint and stipulation shall constitute the entire record in the proceeding; 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; that the order hereinafter set forth may be entered in disposition of

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the 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 and privilege to challenge or contest the validity of such order; that the complaint may be used in construing the terms of the order; that the order may be altered, modified or set aside in the manner provided by statute for other orders of the Commission; and that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

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

ORDER

It is ordered that respondent, Wooster Rubber Company, a corporation, directly or indirectly, through its officers, directors, agents, representatives or employees, or through any corporate or other device, or otherwise in, or in connection with, the offering for sale, sale or distribution of household or kitchen or automobile accessories or equipment made of rubber, or of which rubber is a part, or any other household or kitchen or automobile accessories or equipment, in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

(a) Paying, or contracting for the payment of, anything of value to or for the benefit of any customer of respondent as compensation or in consideration for any advertising services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products manufactured or sold by respondent, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products.

(b) Discriminating, directly or indirectly, among competing purchasers of its products, by contracting to furnish, or furnishing, or contributing to the furnishing of any demonstrator services or facilities connected with the processing, handling, sale or offering for sale of any products manufactured or sold by respondent to any purchaser upon terms not accorded to all competing purchasers on proportionally equal terms.

(c) The commission of any other like or related acts or practices to those herein set forth in Paragraphs (a) and (b) of this order.

Order

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 October 31, 1954].

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IN THE MATTER OF

O. A. SUTTON CORPORATION

CONSENT ORDER ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6213. Complaint, June 18, 1954—Decision, Nov. 4, 1954*

Consent order requiring a manufacturer in Wichita, Kans., to cease misrepresenting in advertising the capacity or performance of its "Vornado Turnabout Window Fan."

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

Mr. John J. McNally for the Commission.

Fleeson, Gooing, Coulson & Kitch, of Wichita, Kans., 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 O. A. Sutton Corporation, a corporation, 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 O. A. Sutton Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business located at 1812 West Second Street, Wichita, Kansas.

PAR. 2. Respondent is now and for several years last past has been, engaged in the business of manufacturing and distributing electric fans, including various models of ventilating fans which were designated by respondent as "Vornado Turnabout Window Fans." In the course and conduct of said business, respondent causes said fans, when sold, to be transported from its place of business located within the State of Kansas to the purchasers thereof located in various other States in the United States and the District of Columbia and at all times mentioned herein has maintained a course of trade in commerce among and between the various States of the United States. Its volume of trade in said commerce is substantial.

PAR. 3. The "Vornado Turnabout Window Fan," while it may also be used inside a home or other area to circulate air within such area,