

Complaint

52 F. T. C.

IN THE MATTER OF
WALTER E. SCHWANHAUSSER ET AL. DOING BUSINESS
AS CHARLES BESELER COMPANY

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

Docket 6328. Complaint, Apr. 15, 1955—Decision, July 8, 1955

Consent order requiring a manufacturer in Newark, N. J., to cease unlawfully extending the "fair trade" laws by its sales policies and resale price maintenance contracts with dealer-purchasers of its projectors and accessories—sold primarily to educational institutions and to large industrial companies and the Armed Forces for use in training programs—which it had done by restrictions as to trade-ins, including the amount a dealer could allow and the articles he could accept; by requiring dealers to observe the terms of its "fair trade" contracts in making sales to the U. S. Government and its agencies even though such sales were specifically excepted from the contracts, and in sales to political subdivisions of States which forbid such price-fixing; by attempting to enforce its "fair trade" prices in non-fair-trading areas; and by illegally penalizing recalcitrant dealers.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn for the Commission.

Waller and Waller, of Chicago, Ill., 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 the parties Walter E. Schwanhausser, Raymond N. Haas and H. Herbert Myers, individually and as partners doing business under the trade name of Charles Beseler Company, hereinafter referred to as "respondents," have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in this respect as follows:

PARAGRAPH 1. Respondents in 1943 formed the partnership now doing business under the name of Charles Beseler Company, which has its office and principal place of business at 60 Badger Avenue, Newark, New Jersey.

PAR. 2. Respondents, acting by, through and as the Charles Beseler Company, hereinafter referred to as the "Company," are engaged in the manufacture and distribution of projectors and accessories, which are primarily sold to educational institutions and large industrial companies for use in training programs. The principal products

which the Company manufactures bear the trade name of "Vu-Lyte," for opaque projectors, and "Vu-Graph," for overhead projectors.

The Company's products are sold throughout the world. The total volume of business for the calendar year 1952 was in excess of \$2,000,000. The Company employs four salesmen who call on customers and potential customers in all of the 48 States of the United States and the District of Columbia.

Some of the Company's products are handled by camera stores on a retail basis, but the greater part of the Company's business is done through approximately 125 dealers who are engaged in the sale of educational supplies. A large part of the Company's total volume of business consists of sales to the Armed Services of the Government, where these products are used in training programs.

PAR. 3. The respondents, acting by, through and as the Company, in the course and conduct of their business, in selling their products to various dealers throughout the country, ship or cause same to be shipped from the place of manufacture of said products to said dealers at locations in various States of the United States other than the State of manufacture, and in the District of Columbia.

The respondents, acting in the aforesaid manner, frequently ship or cause to be shipped the products manufactured by the Company from the place of manufacture directly to the ultimate purchasers thereof, located in States of the United States other than the State of origin of such shipments.

Respondents, in the course and conduct of their business as hereinbefore described, have been and are now engaged in commerce, as that term is defined and understood in the Federal Trade Commission Act, and there has been a current of trade in such commerce, in the products manufactured by the respondents, between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, respondents, acting by, through and as the Company, are in competition in "commerce," as same is defined by the Federal Trade Commission Act, with other manufacturers of projectors and accessories in selling and attempting to sell same to dealers of said products located in the various States of the United States and in the District of Columbia.

Some of the approximately 125 dealers and also some of the camera stores to whom the respondents, in the manner heretofore described, sell the products manufactured by respondents, for resale, frequently are in competition one with the other in selling and attempting to resell such products to purchasers and prospective purchasers thereof, in such commerce.

Complaint

52 F. T. C.

PAR. 5. In the course and conduct of the business of the Company, it enters into so-called "fair trade" contracts or agreements with its dealers, in those States wherein same are legal, whereby it fixes and maintains the prices and terms of sale at which its various trade marked or branded products, such as its "Vu-Lyte" and "Vu-Graph" projectors, are to be resold by said dealers.

As a supplement, adjunct to, and part of such "fair trade" contracts or agreements, the Company has those of its dealers, who are bound by such contracts or agreements, to agree to and maintain the sales policy of the Company in reselling the aforesaid products of the Company.

Included in such a sales policy, to which the Company requires agreement and maintenance by those dealers who enter into such "fair trade" contracts or agreements, are the following provisions regarding trade-ins:

1. Trade-in values must be realistic as to the actual value of the incoming equipment, or it will be considered by the Charles Beseler Company as an extra discount.
2. To determine actual value, there must be a 40% mark-up differential between the allowance to be made (plus the cost of putting the used machine in selling condition) and the estimated selling price.

Effective June 1, 1954, the Company modified its "Retailer Fair Trade Agreement" by including as a part thereof a "Schedule of Maximum Discounts Allowable from Retail List Prices," whereby it specifies the particular equipment which may be received by the dealers, bound by such agreements, as trade-ins on the resale of the products covered by such agreements, as well as the maximum amounts which may be allowed by said dealers on such trade-ins.

PAR. 6. In the course and conduct of its business, the Company, as a supplement, adjunct to, and part of the aforesaid described "fair trade" contracts or agreements with its dealers, has enforced as another of its sales policies the requirement that if any dealer, bound by such "fair trade" contracts or agreements, violates any of the policies of the Company, as spelled out either in pronouncements or through provisions in such "fair trade" contracts or agreements pertaining to trade-ins, said dealer shall thereby forfeit his right to resell the Company's products.

PAR. 7. In the course and conduct of its business, the Company, as a supplement and adjunct to its "fair trade" contracts or agreements, requires and compels, under penalty of refusal to make further sales to him, any dealer, who is bound by such a contract or agreement, who violates the terms thereof or any of the trade-in policies of the Company, to pay to the Company the gross profit he made from the sale

involving such a violation; that is, he is required to pay to the Company all amounts which he received from the purchaser in excess of what he paid the Company for the product or products thus sold.

Furthermore, the Company, in the course and conduct of its business, in the same manner requires its dealers, who are bound by such "fair trade" contracts or agreements and who violate same by reselling the products covered thereby for amounts less than those specified in such contracts or agreements, to pay to the Company, in the same manner, the gross profits received from the resale of the product or products involved.

PAR. 8. The Company, in the course and conduct of its business, when it receives the aforesaid amounts from the dealer who violates the Company's sales policies or "fair trade" contracts or agreements by either of the afore-described methods, remits same to the dealer who competed with the recalcitrant dealer in attempting to make the resale involving said remitted amounts; if there be more than one dealer who competed with the recalcitrant dealer in such transactions, then said amounts are prorated among such competing dealers.

PAR. 9. The Company, in the course and conduct of its business, as a supplement and adjunct to its "fair trade" contracts or agreements, has enforced still another sales policy whereby if a dealer who violates the Company's sales policies or "fair trade" agreements, in the manner herein described, refuses, or fails to remit to the Company the amounts involved through such violation, said dealer forfeits its right to resell the Company's products.

PAR. 10. Respondents, acting by, through and as the Company, have engaged in, and are engaging in, the following illegal acts and practices not permitted or authorized by either federal or State statutes granting immunization to resale price maintenance contracts or agreements pertaining to trade marked or branded products:

1. Arbitrarily, by their sales policies or through the provisions in their "fair trade" contracts or agreements, as hereinbefore described, limiting the amount a dealer, who is bound by such a resale price contract or agreement, can allow for equipment which he receives as a trade-in on the resale of products manufactured by the respondents, which are covered by such resale contracts or agreements;

2. Arbitrarily, by their sales policies or the provisions in their "fair trade" contracts or agreements, as hereinbefore described, restricting the articles or equipment which may be accepted as a trade-in by such dealer in reselling the products manufactured by respondents, which are covered by such contracts or agreements;

3. Requiring the dealers, who are bound by such contracts or agreements, to return to the Company, in the manner hereinbefore de-

scribed, the gross profits such dealers received through resales involving violations of the Company's sales policies or provisions in its "fair trade" contracts or agreements;

4. Depriving the dealers, whom the Company charges with violating the provisions of its "fair trade" contracts or agreements, or sales policies, the rights, to which such dealers would otherwise be entitled to, of defending themselves against charges involving such violation;

5. Arbitrarily remitting to the dealer or dealers, who competed with the dealer whom the Company accused of violating the provisions of its sales policies or "fair trade" contracts or agreements, the amount the Company secured from the recalcitrant dealer;

6. Requiring the dealers to observe the terms of the Company's "fair trade" contracts or agreements in making sales to "the government of the United States, or to any U. S. governmental bureaus or agencies," even though such contracts or agreements specifically state that they are not to apply to such sales;

7. Requiring dealers to observe the terms of the Company's "fair trade" contracts in making sales to political subdivisions or agencies of States, which by statute, such as New York and North Carolina, or by other legal methods, such as Minnesota, forbid the fixing of resale prices in such instances; and

8. Attempting to have dealers in the District of Columbia and the State of Missouri, where there is no authority for "fair trade," to maintain the "fair trade" prices fixed by the Company.

PAR. 11. The purpose and effect of the aforesaid acts, practices and policies of the respondents, as hereinbefore described and alleged, have been, and are, illegally to fix and maintain the resale prices and terms of sale of respondents' products, in a manner and by methods not permitted by either applicable federal or State statutes; to tend to unduly hinder and restrain competition in commerce, as "commerce" is defined by the Federal Trade Commission Act, between and among respondents and other manufacturers of projectors and equipment, who do not engage in such illegal acts and practices; to tend to unduly hinder and restrain competition between and among dealers of the Company, with whom it has entered into "fair trade" contracts or agreements, for the resale in such commerce, of branded or trade marked products of respondents, covered by such "fair trade" contracts or agreements; and such acts, practices, and policies, all and singly, are to the prejudice and the injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 15, 1955, issued and subsequently served its complaint on respondents herein, who, as partners doing business under the trade name of Charles Beseler Company, formerly had their office and place of business at 60 Badger Avenue, Newark, New Jersey, but now have their office and principal place of business at 219 South 18th Street, East Orange, New Jersey. They are engaged in the manufacture and distribution of projectors and accessories. On May 25, 1955, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel in support of the complaint providing for entry of a consent order. By the terms thereof respondents admit all the jurisdictional allegations set forth in the complaint; agree that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; expressly waive the filing of answers, a hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. Respondents further agree that the order hereinafter provided for, shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon and they specifically waive any and all right, power, or privilege to challenge or contest the validity of of the order provided for in the agreement. Said agreement further provides that it, together with the complaint, shall constitute the entire record herein and shall be filed with the hearing examiner for his consideration in accordance with Section 3.25 (f) of the Commission's Rules of Practice as amended May 21, 1955.

Said agreement further provides that the complaint in this proceeding may be used in construing the terms of the order agreed upon, which order, if adopted, may be altered, modified or set aside in the manner provided by the Federal Trade Commission Act for orders of the Commission. Such agreement further provides that it is subject to approval in accordance with Sections 3.21 and 3.25 (f) of the Commission's Rules of Practice, as amended May 21, 1955, and that said order shall have no force and effect unless and until it becomes the order of the Commission.

Order

52 F. T. C.

Said agreement further provides that it is for settlement purposes only and does not constitute an admission by any respondent that he has violated the law as alleged in the complaint.

On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest; that it is an appropriate disposition of the proceeding and in conformity with the action contemplated and agreed upon; makes the following order:

ORDER

It is ordered, That Walter E. Schwanhausser, Raymond N. Haas and H. Herbert Myers, individually and as partners doing business in the name of Charles Beseler Company, or in any other name, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce of projectors and accessories, or any related or similar product or products, regardless of the name or names under which the same are sold, do forthwith cease and desist from:

1. Restricting, limiting or attempting to restrict or limit, through or by the use of any sales policy, resale price contract or agreement, or by any other means or method, the amount or amounts which any dealer or other party or parties, to whom they have sold any product or products, may grant or give as a trade-in allowance on the resale of any such product or products;
2. Restricting, limiting, or attempting to restrict or limit, through the use of any sales policy, resale price contract or agreement, or by any other means or method, the type, grade, class, or nature of any article which any dealer or other party or parties, to whom respondents have sold their product or products, may accept for a trade-in allowance on the resale of any such product or products;
3. Enforcing, or attempting to enforce, any resale price maintenance contract or agreement, to which they are parties, by any means or methods other than those provided in statute or statutes legalizing such contracts or agreements;
4. Requiring, or attempting to require, any party or parties, with whom they have entered into any resale price maintenance contract or agreement, to pay them, directly or indirectly, for their benefit or that of anyone else, any amount or amounts, regardless of how calculated, because of any violation of such contract or agreement by such party or parties;
5. Requiring, or attempting to require, any party or parties, to whom respondents have sold any products for the purpose of resale, to pay them, directly or indirectly, for their own benefit or that of

28

Order

anyone else, any amount or amounts, regardless of how calculated, because of any violation by such party or parties of any sales policy of the respondents relating to prices, discounts, trade-in allowances, or any other subject connected with the resale of any such product;

6. Requiring, or attempting to require, dealers to observe the terms of resale price maintenance contracts or agreements in making resales of any product purchased from the respondents, to any governmental body or agency, where such resale price maintenance is not permitted by statute, other legal methods, or by the terms of such contracts or agreements;

7. Enforcing, or attempting to enforce, by any means or methods not authorized by statute the resale price or terms of sale of any product or products purchased from the respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of July, 1955, become the decision of the Commission; and, accordingly:

It is 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.

Complaint

52 F. T. C.

IN THE MATTER OF

PAUL A. RAICH

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS
LABELING ACT*Docket 6335. Complaint, Apr. 26, 1955—Decision, July 8, 1955*

Consent order requiring a seller in New York City to cease violating the Wool Products Labeling Act by advertising and branding as "Pure Imported Cashmere", etc., blankets which were made entirely of sheep's wool or contained very little Cashmere; and to cease pre-ticketing the blankets with excessive and fictitious prices.

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

Mr. George E. Steinmetz for the Commission.

Mr. Lester A. Lazarus and *Mr. Frederick E. M. Ballon*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Paul A. Raich, an individual, herein-after referred to as the respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it with respect to the said Paul A. Raich would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Paul A. Raich, during the period running from about September 18, 1953 until March 9, 1954, acted as the president of the corporation incorporated under the laws of the State of New Jersey, known as "Cashmere-Wool, Ltd.". Both Paul A. Raich and the said corporation maintained their offices and their principal place of business at 450 Seventh Avenue, New York, New York, and the said respondent Paul A. Raich now resides at 287 Terhune Avenue, Passaic, New Jersey.

PAR. 2. During all of the times mentioned the said respondent Paul A. Raich directed and controlled the acts, policies, and practices of the said corporation, namely, Cashmere-Wool, Ltd.

PAR. 3. The said corporation, Cashmere-Wool, Ltd., was adjudicated a bankrupt in the District Court of the United States for the District of New Jersey on or about March 9, 1954, and the business of said corporation has since been terminated and all of its assets