

Complaint

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IN THE MATTER OF
THE UNION MALLEABLE MANUFACTURING COMPANY
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (c)
OF THE CLAYTON ACT

Docket 6366. Complaint, June 20, 1955—Decision, Oct. 13, 1955

Consent order requiring a corporation in Ashland, Ohio, to cease granting Sears, Roebuck & Co., large mail order house, on direct purchases of "U-Brand" plumbing products, an allowance amounting to brokerage in addition to the discounts allotted other customers, all of whom purchased through brokers, thus charging Sears, Roebuck prices lower than it charged other buyers by an amount reflecting brokerage fees, in violation of Sec. 2 (c) of the amended Clayton Act.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Donald K. King for the Commission.

Mr. Samuel K. Walzer, of Cleveland, Ohio, for respondent.

COMPLAINT

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

PARAGRAPH 1. The Union Malleable Manufacturing Company, hereinafter referred to as respondent, is a corporation organized, existing and doing business under the laws of the State of Ohio. Its executive offices and principal place of business are located at Cork Street, Ashland, Ohio. Respondent, in connection with its business, operates two wholly owned corporate subsidiaries which are also located in Ashland, Ohio, and maintains sales offices in all principal cities throughout the world.

PAR. 2. Respondent corporation as aforesaid is now and has been since 1936 engaged in the business of manufacturing, selling, and distributing malleable iron pipe fittings, steel pipe nipples, wrought steel couplings, cast brass solder joint fittings, floor flanges, bushings, and other items of like character used in the plumbing trade. Such products are hereinafter referred to as plumbing products. Respondent corporation sells and distributes its products under its own brand, namely, "U-Brand."

PAR. 3. Respondent corporation in the course and conduct of its business since June 19, 1936, and more particularly since January 1, 1950, has sold and distributed and now sells and distributes its plumbing products to buyers located in the several cities of the United States other than the State of Ohio, and causes such products when sold to be transported from its place of business in Ohio to buyers thereof located in the several States of the United States other than the State of Ohio, and there has been since June 19, 1936, and more particularly since January 1, 1950, a constant current of trade and commerce conducted by said respondent corporation in such plumbing products between and among the various States of the United States.

PAR. 4. Respondent corporation now sells and distributes and since June 19, 1936, and more particularly since January 1, 1950, has sold and distributed its plumbing products through two separate and distinct methods.

The first method is by selling to wholesale buyers through brokers who usually designate themselves as manufacturers' representatives. Such brokers negotiate the sale of respondent corporation's plumbing products for and on account of the respondent as principal. Their only compensation for this service is the commission or brokerage fee paid to them by the respondent. Such commission or brokerage fee is customarily based on the percentage of the invoice as well as the price of the plumbing products sold. Such brokers act as respondent corporation's sales agents, soliciting and obtaining orders for respondent corporation's plumbing products at respondent corporation's prices and on its terms. This phase of respondent's business is not involved in the present proceeding.

The second method, which is challenged by this complaint, is by direct selling to Sears, Roebuck & Company. The respondent does not use brokers or other intermediaries in connection with the sale of its plumbing products to this company but rather sells its products directly to said buyer. Such direct buyer of respondent's products may be described as a large mail order house with numerous retail stores located in many cities and towns in the various sections of the United States. Such buyer transmits its orders for plumbing products direct and respondent corporation on receipt of said orders ships its plumbing products, as requested, either to said buyer's warehouses or to one or more of its retail stores.

Respondent corporation grants and allows said direct buyer an additional discount on such purchases, which additional discount is not allowed to buyers who purchase through respondent's brokers. This procedure permits said buyer to purchase said plumbing products at prices lower than the prices at which said products are purchased

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by other buyers who purchase through respondent's brokers. The lower price which respondent charges said direct buyer is an amount which reflects all or a portion of the commission or brokerage currently being paid by respondent to its respective brokers for effecting sales.

For the calendar year 1953 respondent's gross sales were \$5,283,051, of which \$633,220 represented gross sales to Sears, Roebuck, & Company.

PAR. 5. An illustration of respondent's pricing practices may be given through a comparison of respondent's Invoices No. 13254 and No. 13312, both of which are dated July 29, 1954. Invoice No. 13254 lists as an item sold to Sears, Roebuck & Company 500 1/2" galvanized malleable "L" iron fittings at a price of \$130.00 less a discount of 62-5-5-5-5% (or 70.6%), resulting in a total discount of \$91.78 and a net price of \$38.22. Invoice No. 13312, on the other hand, lists the same quantity of the same item as sold to Frederick L. Markee of Grand Rapids, Michigan, at a price of \$130.00 less a discount of 62-5-5-5-5% (or 69.05%), resulting in a total discount of \$89.77 and a net price of \$40.23.

PAR. 6. Respondent corporation since June 19, 1936, and more particularly since January 1, 1950, in connection with the interstate sale of its plumbing products by the second method set forth in Paragraph 4 herein, has paid and granted and is now paying and granting, directly or indirectly, commissions, brokerage, or other compensation or discounts in lieu thereof to Sears, Roebuck, & Company, a direct buyer of its plumbing products, who purchases said products for its own account. Respondent's acts and practices as set forth above are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended.

PAR. 7. The acts and practices of respondent corporation as above alleged and described violate Subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of Subsection (c) of Section 2 of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on June 20, 1955 issued and subsequently served its complaint in this proceeding against the respondent which is an Ohio corporation with its office and principal place of business located at Cook Street in the city of Ashland, Ohio.

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Order

On August 26, 1955, there was submitted to the undersigned hearing examiner an agreement between counsel in support of the complaint, respondent and its counsel providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of facts or conclusions of law; and waives all the rights it may have to challenge or contest the validity of the order to cease and desist agreed upon. Such agreement further provides that it disposes of all of this proceeding as to both parties; that the record on which any decision shall be based shall consist solely of the complaint and the agreement; that the latter shall not become a part of the official record until and unless it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the hereinafter set forth order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent and when so entered it shall have the same force and effect as if entered after a full hearing and may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

On the basis of the foregoing, the undersigned hearing examiner concludes that such agreement is an appropriate disposition of the proceeding and in accordance with the action contemplated and agreed upon makes the following order:

ORDER

It is ordered, That the respondent, The Union Malleable Manufacturing Company, a corporation, and its officers, directors, associates, or employees, directly or through any corporate or any other device, in connection with the sale of plumbing products or any other merchandise in interstate commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Granting or giving, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of any buyer, anything of value as a commission, brokerage, or other compensation or any discount or allowance in lieu thereof, upon or in connection with any sale of plumbing products, or other commodities, made for the buyer's own account.

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DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 13th day of October, 1955, become the decision of the Commission; and, accordingly:

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.

COMPLAINT

IN THE MATTER OF

MISS YOUTH FORM CREATIONS CORPORATION ET AL.

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

Docket 6351. Complaint, May 16, 1955—Decision, Oct. 25, 1955

Consent order requiring distributors in New York City to cease furnishing retailers and dealers means for deceiving the purchasing public by misrepresenting on advertising mats, reprints, and other promotional material supplied them, and on tickets affixed to garments, the retail selling price, savings involved, and the quality and value of women's slips and underclothes.

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

Mr. Terral A. Jordan for the Commission.

Mr. Leroy E. Rodman, of New York City, and *Friedman, Locker & Schlezinger*, of Washington, D. C., 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 Miss Youth Form Creations Corporation, a corporation, and Sid Kay and Irving L. Brown, individually and as officers of said corporation, hereinafter 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 Miss Youth Form Creations Corporation 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 38 East 30th Street, New York, New York. Respondents Sid Kay and Irving L. Brown are President and Treasurer, and Vice-President and Secretary, respectively, of said corporate respondents. These individuals acting in conjunction with each other formulate, direct and control all of the policies, acts and practices of said corporation. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and have been, for more than six months last past, engaged in the sale and distribution of women's