

Complaint

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IN THE MATTER OF
AMERICAN BRAKE SHOE COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2 (a) OF THE CLAYTON ACT

Docket 6383. Complaint, June 29, 1955—Decision, Nov. 15, 1955

Consent order requiring the second largest bearing manufacturer in the industry—which, combined with the largest, accounted for more than 90% of that business—to cease violating Sec. 2(a) of the Clayton Act as amended through selling railroad car journal bearings at different prices in different trade areas from 1950 to 1954, and selling such bearings to a favored customer in the southeastern trade area (including the States of Virginia, North Carolina, Georgia, and Florida) at a lower price than that charged other customers in the same area, and which was below the cost of manufacture and sale during much of the years 1953 and 1954.

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

Mr. Peter J. Dias for the Commission.

Mr. Howard C. Buschman, Jr., of New York City, 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 Section 2 (a) of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, American Brake Shoe Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 230 Park Avenue, New York, N. Y.

The principal activities of the respondent are conducted through approximately ten divisions including the National Bearing Division which maintains headquarters at 4930 Manchester Avenue, St. Louis, Missouri, and manufacturing plants located in the same city; St. Paul, Minnesota; Niles, Ohio and Portsmouth, Virginia.

PAR. 2. Respondent corporation, through its divisions, is now and for many years has been engaged in the manufacture, sale and distribution of various metal products. Included among said products are railroad car journal bearings, hereinafter referred to as "bearings," manufactured by its National Bearing Division. Said bearings are manufactured according to designs and specifications set by the

Mechanical Division of the Association of American Railroads and are of like grade and quality.

The respondent, second largest of the two major bearing manufacturers in the industry who, combined, account for more than 90% of that business, is now and for many years has been competitively engaged with other corporations and firms in the sale of bearings which are also made according to the same designs and specifications.

PAR. 3. In the course and conduct of its business, respondent engages in commerce, as "commerce" is defined in the Clayton Act, in that it causes said bearings, when sold, to be transported from their places of manufacture to purchasers thereof located in Virginia, North Carolina, Georgia, Florida and various other States of the United States. Said products are sold and distributed for use and consumption within the various States of the United States.

PAR. 4. Respondent sells some bearings to new railroad car manufacturers to be used as original equipment but the bulk of its sales of bearings is made to railroads for replacement of worn out bearings, hereinafter referred to as "scrap" or "scrap bearings."

New bearings, regardless of source of manufacture, are sold by weight and typically, for a price computed on the basis of a fixed sum of money, hereinafter referred to as the "spread," plus an amount of scrap bearings, exchanged by the railroads, equivalent in weight to that of the new bearings. In some instances when a railroad either has insufficient or no scrap to exchange, the price of new bearings is computed on the basis of the spread plus an additional sum of money equivalent to the value of the metal used in the manufacture of new bearings. Hereinafter, for convenience, only the "spread" mentioned above will be referred to as the "price" and in each instance the price will be on the basis of a hundred weight. However it is to be understood that in each instance the price also includes either scrap bearings or an additional sum of money as described above.

The weight of scrap received in exchange towards the price of new bearings is computed on the basis of its gross weight less $1\frac{1}{2}$ or 2% deduction for dirt and foreign matter.

Respondent has generally charged all customers the same price for new bearings and has generally afforded all customers the same terms and conditions of sale, namely, delivery f.o.b. tracks, net price 30 days.

PAR. 5. Prior to 1950, respondent competed with the other major bearing manufacturer in all areas except one, namely, the southeastern area of the United States served by respondent's Portsmouth, Virginia, plant and in that area respondent had no competition. As used in this complaint, the "southeastern area" includes the States of Virginia; North Carolina; Georgia and Florida. Prior to 1950,

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respondent charged all customers in all areas the same price for new bearings and afforded all customers the same terms and conditions of sale.

In the latter part of 1949, a new bearing manufacturer entered the field and in 1950 commenced selling bearings at a price of \$7.00 to railroads located in the southeastern area of the United States in competition with the respondent. Substantially all of said competitor's customers are located in the southeastern area and during the years 1951 through 1953 said competitor continued to sell bearings to all customers at a price of \$7.00 with the exception of one customer, the largest purchaser, which it sold at \$6.00. During 1954, the competitor again sold or offered to sell bearings to all customers in the southeastern area, including the largest purchaser, at a price of \$7.00.

Early in 1950, respondent reduced its price for bearings, from \$7.84 to \$7.00 in the southeastern area and continued that price to all customers in that area through 1951. During 1952 respondent offered to sell to the largest purchaser referred to above at \$5.94. During 1953 and 1954 respondent offered to sell and sold bearings to that customer at \$5.90 and in addition granted that customer a cash discount for payment within 10 days. During the period 1952 through 1954, respondent charged all other customers in the southeastern area \$7.00 and charged its customers in all other areas \$7.84 until November 1952 when it increased that price to \$8.65. Respondent afforded no other customer a cash discount.

The following chart, comparing respondent's prices with those of its competitor in the southeastern area shows: in column one, the respondent's prices to customers in all areas other than the southeastern area; in column two, the prices charged all customers, except the favored customer, in the southeastern area; in column three, the prices offered or charged the favored customer in the southeastern area; and in column four, the percentage of the favored customer's business obtained each year.

	(Col. 1)	(Col. 2)		(Col. 3)		(Col. 4)	
	Respondent's prices to customers in all areas except the southeastern area	Prices to all customers in southeastern area except favored customer		Prices to favored customer in southeastern area		Percentage of favored customer's business	
		Resp.	Comp.	Resp.	Comp.	Resp.	Comp.
Prior to—						percent	percent
1950.....	\$7.84	\$7.84	(1)	\$7.84	(1)	100	(1)
1950.....	7.84	7.00	7.00	7.00	7.00	70	30
1951.....	7.84	7.00	7.00	7.00	6.00	6	94
1952.....	*7.84	7.00	7.00	*5.94	6.00	1	99
1953.....	8.65	7.00	7.00	5.90	6.00	41	59
1954.....	8.65	7.00	7.00	5.90	7.00	58	42

¹ Not in business.

* \$8.65 in November.

† Offered.

Respondent thus sold bearings at different prices in different areas during the period 1950 to 1954 and sold bearings to the favored customer at a price which was lower than that charged other customers in the same area, which price was at or below respondent's cost of manufacture and sale, during a substantial portion of the years 1953 and 1954.

PAR. 6. As a result of respondent's practices as herein alleged, respondent's said competitor in the southeastern area has lost a substantial share of its business. The effect of respondent's discriminations in price may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy, or prevent competition with said respondent.

PAR. 7. 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).

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that American Brake Shoe Company, a Delaware corporation, with its office and principal place of business at 230 Park Avenue, New York, N. Y., is now, and for many years has been engaged in the manufacture, sale and distribution of various metal products, including railroad car journal bearings manufactured according to designs and specifications set by the Mechanical Division of the Association of American Railroads; that it is now and for many years has been competitively engaged with other corporations and firms in the sale of bearings made according to the same designs and specifications; and that it has violated Section 2 (a) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13) by selling bearings at different prices in different areas, and to customers in the same area, the effect of which discriminations in price may be substantially to lessen, injure, destroy or prevent competition with said respondent. After the issuance of the complaint, to which no answer was filed, respondent, its counsel, and counsel supporting the complaint, on September 13, 1955, entered into an Agreement Containing Consent Order to Cease and Desist, which was approved by the Director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been made in accordance with such allegations; that the record on

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which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified, or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of the Clayton Act as amended. Accordingly, the hearing examiner finds this proceeding to be in the public interest and accepts the Agreement Containing Consent Order to Cease and Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent, American Brake Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or indirectly, through the National Bearing Division or any other division, or through any corporate or other device, in or in connection with the sale of railroad car journal bearings in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of said product by:

Selling railroad car journal bearings of like grade and quality to a purchaser in any trade area at prices different from those charged any other purchaser in the same trade area, whether the sale is effected through respondent's plant which customarily supplies such area or through any of its other plants, where, in the sale of said bearings to any purchaser charged a lower price, respondent is in competition with any other seller.

The term "trade area" as used herein means the geographical area customarily supplied with railroad car journal bearings by each of respondent's several manufacturing plants.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Whereas, the hearing examiner on October 6, 1955, filed his initial decision in this matter, which initial decision was based upon an agreement for a consent order executed on September 13, 1955, by all parties; and

Whereas, upon its review of said initial decision the Commission has noted that the order to cease and desist contained therein, through inadvertent omission of a definition of the term "trade area," varies from the order to cease and desist agreed upon by the parties; and

In order to correct this obviously clerical omission and to conform the order in the initial decision with the form of order in the "Agreement Containing Consent Order to Cease and Desist" executed by the parties hereto:

It is ordered, That the order to cease and desist contained in said initial decision be modified so that the said order shall read in full, as follows:

"It is ordered, That respondent, American Brake Shoe Company, a corporation, and its officers, representatives, agents and employees, directly or indirectly, through the National Bearing Division or any other division, or through any corporate or other device, in or in connection with the sale of railroad car journal bearings in commerce, as 'commerce' is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of said product by:

"Selling railroad car journal bearings of like grade and quality to a purchaser in any trade area at prices different from those charged any other purchaser in the same trade area, whether the sale is effected through respondent's plant which customarily supplies such area or through any of its other plants, where, in the sale of said bearings to any purchaser charged a lower price, respondent is in competition with any other seller.

"The term 'trade area' as used herein means the geographical area customarily supplied with railroad car journal bearings by each of respondent's several manufacturing plants."

As so modified, the initial decision of the hearing examiner shall, on the 15th day of November, 1955, become the decision of the Commission; and, accordingly

It is further 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.

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IN THE MATTER OF

E. MANUEL STOLAROFF ET AL. TRADING AS
NATONE COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6365. Complaint, June 17, 1955—Decision, Nov. 17, 1955*

Consent order requiring copartners in Los Angeles, Calif., to cease disseminating advertisements in newspapers and periodicals and otherwise which represented falsely that their "Talika Eye Lash Creme" would make eyelashes grow longer and thicker.

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

Mr. Charles S. Cox for the Commission.

Mr. Marvin A. Freeman, of Beverly Hills, Calif., 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 E. Manuel Stolaroff, individually, and E. Manual Stolaroff, Irving Grath and Moe A. Lesser, individually and as trustees, all trading as copartners under the name of Natone Company, 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 E. Manuel Stolaroff is an individual. Respondent E. Manuel Stolaroff, Irving Grath and Moe A. Lesser are individuals and trustees for the benefit of JoAnne Cotsen and Lois Stolaroff. All of said individuals trade as copartners under the name of Natone Company. The address of respondent E. Manuel Stolaroff is 1207 West Sixth Street, Los Angeles 17, California, and the address of Irving Grath and Moe A. Lesser is 232 North Canon Drive, Suite 216, Beverly Hills, California.

PAR. 2. Respondents are now, and have been for more than one year last yast, engaged in the advertising and sale of a cosmetic product as "cosmetic" is defined in the Federal Trade Commission Act.