

IN THE MATTER OF
CHARLET UNDERGARMENT CORPORATION ET AL.

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

Docket 6399. Complaint, Aug. 23, 1955—Decision, Mar. 7, 1956

Consent order requiring a seller in Passaic, N. J., to cease misrepresenting the retail selling price, quality, and value of slips and other women's garments, through such statements on tickets affixed to them prior to their sale to retailers and dealers as "Made to sell for \$5.95," when the usual price of the garments was substantially less.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

Muhlstock & Blei, 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 the Charlet Undergarment Corporation, a corporation, and Leonard Steinman, Charles Gerber, and Ted Pojanowski, 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 Charlet Undergarment Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 122 Eighth Street, Passaic, New Jersey. Respondents Leonard Steinman, Charles Gerber, and Ted Pojanowski are President, Treasurer, and Secretary, respectively, of said corporate respondent. 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 slips and wearing apparel to retailers and dealers in commerce among and between the various States of the United States and in the District of Columbia. Respondents maintain, and at all times

mentioned herein have maintained, a substantial course of trade in said garments, in commerce, among and between the various States of the United States and in the District of Columbia. Said slips and wearing apparel are sold to retailers and dealers for resale to the purchasing public.

PAR. 3. In the course and conduct of their said business respondents have made and continue to make many representations respecting the retail selling price or quality or value of said slips and wearing apparel. These representations are and have been made on the tickets affixed by respondents to said women's slips prior to their sale and distribution as aforesaid.

Typical and illustrative of such representations are the following:

Made to sell for \$5.95.

Suggested Retail Price \$5.95.

PAR. 4. Through the use of the aforesaid representations and others similar thereto not specifically set forth herein, respondents have represented and now represent, directly or by implication:

(a) That the said slips preticketed as aforesaid sell and have sold in the usual and customary course of business at retail for \$5.95 each.

(b) That their said slips preticketed as aforesaid are of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for \$5.95 each.

PAR. 5. The aforesaid statements are false, misleading, and deceptive. In truth and in fact:

(a) Respondents' said slips preticketed as aforesaid do not sell and have not sold in the usual and customary course of business at retail for \$5.95 each; but said slips sell and have sold in the usual and customary course of business at retail for an amount substantially less than \$5.95 each.

(b) Respondents' said slips preticketed as aforesaid are not of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for \$5.95; but said slips are of a quality or value equal to similar merchandise made by other manufacturers and offered for sale and sold in the usual and customary course of business at retail for substantially less than \$5.95 each.

PAR. 6. By furnishing to retailers and dealers preticketed women's slips as aforesaid, respondents provide such retailers and dealers with the means and instrumentalities through and by which they may mislead and deceive the purchasing public as to the usual

and customary retail selling price or quality or value of said slips.

PAR. 7. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms, and individuals engaged in the sale, in commerce, of women's slips and wearing apparel.

PAR. 8. The aforesaid acts and practices of the respondents had and now have the capacity and tendency to mislead and deceive a substantial number of retailers, dealers, and members of the purchasing public with respect to the usual and customary retail selling price or quality or value of respondents' said slips. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 23, 1955, charging them with having violated the Federal Trade Commission Act through the making of certain misrepresentations regarding the retail selling price or quality or value of women's slips and wearing apparel.

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into an agreement with counsel supporting the complaint, dated November 28, 1955, providing for the entry of a consent order disposing of all the issues in this proceeding as to all parties, which agreement was duly approved by the Acting Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived 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 they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement.

By said agreement respondents' answer to the complaint shall be considered as having been withdrawn and the record on which the

initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the said agreement. It was further agreed 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 said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Charlet Undergarment Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 122 Eighth Street in the City of Passaic, State of New Jersey. Respondents Leonard Steinman, Charles Gerber, and Ted Pojanowski are individuals and are President, Treasurer, and Secretary, respectively, of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents, Charlet Undergarment Corporation, a corporation, and its officers, and Leonard Steinman, Charles Gerber, and Ted Pojanowski, individually and as officers of said corporate respondent, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of women's wearing apparel, including underclothes and slips, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, indirectly, or by implication, or providing retailers, dealers, or others with pre-ticketed merchandise or other material, device, or plans which represent, directly, indirectly, or by implication:

1. That the regular retail selling price of respondents' said wearing apparel is any amount greater than the price at which such wearing apparel is usually and customarily sold at retail by retailers regularly selling such wearing apparel;

2. That the retail value of respondents' said wearing apparel is equal to the retail selling price of higher-priced merchandise made by other manufacturers regularly selling or having been sold contemporaneously in the same general trade area supplied by respondents and such other manufacturers, unless respondents' said wearing apparel is in fact of substantially equal grade, quality, design, and workmanship to said higher-priced merchandise, in which case respondents may so represent.

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 7th day of March 1956, 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

IN THE MATTER OF

ELMO, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT*Docket 6443. Complaint, Nov. 8, 1955—Decision, Mar. 7, 1956*

Consent order requiring a manufacturer of cosmetics, beauty aids, and toilet preparations to cease discriminating in price in violation of subsections 2 (d) and 2 (e) of the Clayton Act, as amended, through furnishing demonstrator services and promotional and advertising allowances in varying amounts to certain customers, but not to their competitors in the Chicago trade area, and not requiring from the favored customers reciprocal services of proportionally equal degree.

Before *Mr. Everett F. Haycraft*, hearing examiner.
Mr. Donald K. King for the Commission.
LaBrum & Doak, of Philadelphia, Pa., for respondent.

COMPLAINT

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

PARAGRAPH 1. Respondent Elmo, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Tulip and Rhawn Streets, Philadelphia, Pennsylvania.

PAR. 2. The respondent is now and for a number of years has been engaged in the business of manufacturing and selling cosmetics, beauty aids, and toilet preparations. Said products are sold to customers with places of business located throughout the several states of the United States and in the District of Columbia for resale to consumers within the United States.

PAR. 3. In the course and conduct of said business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act, having shipped its products or caused them to be transported from its said place of business to said customers with places of business located in the several states of the United States and in the District of Columbia.

PAR. 4. In the course of said business in commerce, respondent