

Complaint

52 F. T. C.

IN THE MATTER OF
HUDNUT SALES CO., INC.

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

Docket 6440. Complaint, Nov. 8, 1955—Decision, Apr. 4, 1956

Consent order requiring a New York City manufacturer of cosmetics, beauty aids, and toilet preparations, sold under trade names "Richard Hudnut," "Courtley," "DuBarry," and "Chen Yu," to cease violating Sec. 2 (d) of the Clayton Act, through entering into cooperative advertising arrangements with certain favored customers whereby it paid all, or a portion, of the cost of newspaper advertisements of its products run by them.

Before *Mr. Robert L. Piper*, hearing examiner.

Mr. Donald K. King for the Commission.

Mudge, Stern, Baldwin & Todd, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Hudnut Sales Company, Inc., hereinafter designated as respondent, has violated and is now violating the provisions of sub-section (d) 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:

PARAGRAPH 1. Respondent Hudnut Sales Company, Inc., is a corporation organized 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 113 West 18th Street, New York, New York.

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 under various trade names such as Richard Hudnut, Courtley, DuBarry and Chen Yu. 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

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several states of the United States and in the District of Columbia.

PAR. 4. In the course of said business in commerce, particularly during the past two years, respondent has paid or contracted to pay, money, goods, or other things of value to or for the benefit of some of their customers as compensation or in consideration for services and facilities furnished, or contracted to be furnished, by or through such customers, in connection with the processing, handling, sale or offering for sale of said cosmetics, beauty aids, and toilet preparations which respondent manufactures, sells, or offers for sale; and respondent has not made, or contracted to make such payments or consideration available on proportionally equal terms to all other of their customers competing in the sale and distribution of said products.

PAR. 5. Specifically respondent has entered into cooperative advertising arrangements with some of its favored customers whereby respondent has paid all, or a portion of the cost of newspaper advertisements dealing with respondent's products run by such customers.

The percentage of cost reimbursed or paid by respondent to such customers for such newspaper advertisements was arbitrarily determined by negotiations between respondent and such individual customers.

Such customers were in competition with other customers of respondent in the resale of respondent's products.

Such payments were not made available on proportionally equal terms or were not made available on any terms at all to certain other customers of respondent.

PAR. 6. Illustrative of the practices described in Paragraph Five of this complaint were respondent's dealings with its customers located in Chicago, Illinois during the last half of 1954. Of the large number of customers respondent has in that city only eight received an advertising allowance from respondent. These favored customers, the amounts paid to them by respondent, and the percentage of such payments to the customer's total newspaper advertising expenses with regard to respondent's products may be listed as follows:

Customer	Allowance	Percentage	Customer	Allowance	Percentage
Carson, Pirie & Scott.....	\$1,400.00	100	Mandel Bros.....	2,750.00	87
The Fair.....	2,658.00	100	Sears Roebuck.....	918.40	100
Stineway-Ford Napkins..	4,631.00	100	Walgreen.....	17,240.68	100
Marshall Field.....	4,010.89	100	Wieboldt's.....	2,959.70	96

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

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INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on November 8, 1955, charging it with having violated Section 2 (d) of the Clayton Act, as amended by the Robinson-Patman Act. After being served with said complaint, respondent appeared by counsel and entered into an agreement, dated February 1, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of 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. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said 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 said 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, that said order to cease and desist 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, and that the complaint and Trade Practice Rule 16 C.F.R. 221.1 (g) may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of the proceeding, the same are hereby accepted and ordered filed upon becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Hudnut Sales Co., Inc.¹ is a corporation 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 113 West 18th Street, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent above named. The complaint states a cause of action against said respondent under the Clayton Act as amended by the Robinson-Patman Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent, Hudnut Sales Co., Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale of cosmetics, beauty aids and toilet preparations in commerce, as "commerce" is defined in the Clayton Act as amended, do forthwith cease and desist from:

Paying, or contracting to pay, to, or for the benefit of, any customer of respondent, anything of value as compensation or in consideration for advertising, display, demonstrator, promotional, or other services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of respondent's products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the resale of such products.

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 4th day of April 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Hudnut Sales Co., Inc., a corporation, 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.

¹ Incorrectly referred to as Hudnut Sales Company, Inc., in the caption of the complaint and other documents.

IN THE MATTER OF
THE C. H. MUSSELMAN COMPANY ET AL.

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

Docket 6041. Complaint, Sept. 8, 1952—Decision, Apr. 6, 1956

Order dismissing, for failure to sustain the allegations, complaint charging more than 1700 apple growers and their trade associations and five corporate processors of apples in the "Appalachian Belt" with concertedly fixing and maintaining the prices paid to growers for raw apples and diverting shipments from one to another processor for the purpose of averting a price-break from the established prices by any processor.

Mr. Leslie S. Miller, Mr. William J. Boyd, Jr. and Mr. Wilmer L. Tinley for the Commission.

Mr. Daniel R. Forbes, of Washington, D. C., for National Fruit Product Co., Inc., and along with—

Keith, Bigham & Markley, of Gettysburg, Pa., for The C. H. Musselman Co., and

Mr. J. P. Arthur, of Winchester, Va., for Shenandoah Valley Apple Cider & Vinegar Corp.

Mr. David Putney, of Harrisburg, Pa., for Knouse Foods Cooperative, Inc.

Wharton, Aldhizer & Weaver, of Harrisonburg, Va., for Bowman Apple Products Co., Inc.

Mr. Lyman S. Hulbert, of Washington, D. C., for Appalachian Apple Service, Inc.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

HISTORY OF THE PROCEEDING

On September 8, 1952, the Federal Trade Commission issued its complaint, charging the respondents named above with entering into "an understanding, agreement and combination" to restrain trade in raw apples in interstate commerce in the "Appalachian area of Virginia, West Virginia, Pennsylvania and Maryland" by (1) fixing, establishing and maintaining prices to be paid for apples for processing purposes; (2) fixing and establishing a mathematical percentage pricing formula for calculating the prices to be paid for various grades of apples and price differentials between such grades; and (3) diverting raw apples from one processor to another for the purpose of maintaining the prices thereof set by