

Complaint

IN THE MATTER OF
HELENA RUBINSTEIN, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2 (d) AND 2 (e) OF THE CLAYTON ACT*Docket 6441. Complaint, Nov. 8, 1955—Decision, May 9, 1956*

Consent order requiring a manufacturer of cosmetics, beauty aids, and toilet preparations, with principal place of business in New York City, to cease violating Secs. 2 (d) and 2 (e) of the Clayton Act, as amended, by paying demonstrator allowances, cooperative advertising materials and allowances, and promotional allowances to competing customers in amounts not proportionally equal as required by the statute but determined on the basis of individual negotiations which resulted in different and arbitrary terms to different customers.

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

Mr. Donald K. King for the Commission.

Sherman & Goldring, of New York City, for respondent.

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The Federal Trade Commission, having reason to believe that Helena Rubinstein, 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. Helena Rubinstein, 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 East Hills, Long Island, 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. 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 District of Columbia.

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PAR. 4. In the course of said business in commerce, respondent has paid or contracted to pay, money, goods, or other things of value to or for the benefit of some of its customers as compensation 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 respondent's products and respondent has not made or contracted to make such payments or considerations (or in the alternative, equivalent services or facilities) available on proportionally equal terms to all other of its customers competing in the sale and distribution of said products.

PAR. 5. In the course of said business in commerce, respondent has furnished, contracted to furnish, or has contributed to the furnishing of certain services and facilities to some of its customers in connection with the processing, handling, sale or offering for sale of respondent's products by them; and respondent has not made such services and facilities (or in the alternative, equivalent payments or allowances) available on proportionally equal terms to all other of its customers competing in the sale and distribution of said products.

PAR. 6. Specifically, in dealing with its customers, respondent has furnished or paid demonstrator services or allowances and/or advertising facilities or allowances and/or paid promotional allowances to certain competing customers in amounts (based on respondent's costs) not equal to the same percentage of net purchases of respondent's products by such customers (and not proportionally equal by any other test); and respondent did not offer or otherwise make available such services, facilities and allowances in amounts equal to the largest of such percentages to all such competing customers (and not proportionally equal by any other test).

Illustrative of and included among the practices referred to above were respondent's following described dealings with its 64 customers located in the Washington, D. C., trade area during the year 1954.

1. Two large department stores received from respondent promotional and demonstrator allowances in amounts equal to a higher percentage of their net purchases than was granted by respondent to other competing customers who furnished the same or greater reciprocal services or facilities.

2. Six favored customers were furnished cooperative advertising materials and allowances by respondent totaling in excess of 8% of their individual net purchases from respondent. Seventeen competing customers were not accorded cooperative advertising materials or allowances by respondent. Many other competing customers were furnished cooperative advertising materials or allowances by respondent.

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ent equal to approximately 2% of their individual net purchases from respondent.

3. Certain of respondent's customers in that sales area whose net purchases from respondent total less than \$8,000 per year received promotional allowances equal to 9% of their individual net purchases from respondent while other competing customers purchasing approximately the same quantities from respondent received promotional allowances of 5% of net purchases from respondent.

In determining the services and allowances granted to these competing customers, respondent did not use any proportionally equal basis. On the contrary, they were determined on the basis of individual negotiations between respondent and different customers which resulted in different and arbitrary terms.

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

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) and (e) 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 March 6, 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

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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) shall 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 this 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 Helena Rubinstein, Inc., 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 655 Fifth Avenue, in the City of New York, State of 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 Helena Rubinstein, 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:

1. Paying, or contracting to pay to, or for the benefit of, any customer, anything of value as compensation or in consideration for 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 distribution or resale of such products.

2. Furnishing or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers

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from respondent who resell such products in competition with such purchasers who receive such services or facilities.

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 9th day of May, 1956, 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.

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IN THE MATTER OF

DAVID BECKER ET AL. TRADING AS
BECKER & BURNS FURRIERSCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF THE
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS*Docket 6483. Complaint, Jan. 10, 1956—Decision, May 9, 1956*

Consent order requiring furriers in Philadelphia, Pa., to cease violating the Fur Products Labeling Act by advertisements in circulars, handbills, etc., which failed to disclose the names of animals producing the furs in certain products; misrepresented prices as wholesale and less and reduced from purported regular prices which were in fact fictitious, and misrepresented savings possible to purchasers.

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

Mr. Floyd O. Collins for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that David Becker and Abraham Burns, individually and as copartners trading and doing business as Becker & Burns Furriers, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Respondents David Becker and Abraham Burns are individuals and copartners trading and doing business under the firm name of Becker & Burns Furriers, with their office and principal place of business located at 1211 Chestnut Street, Philadelphia, Pennsylvania. Said individual respondents formulate, direct, and control the acts, practices and policies of the said business.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been, and are now, engaged in the introduction into commerce, and in the sale, advertising and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products, and have sold, adver-