

Complaint

IN THE MATTER OF
REVLON PRODUCTS CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (d)
AND 2 (e) OF THE CLAYTON ACT

Docket 6519. Complaint, Feb. 20, 1956—Decision, Aug. 17, 1956

Consent order requiring a manufacturer in New York City, with annual sales in excess of \$30,000,000, to cease discriminating in price among its competing customers in violation of Secs. 2(d) and 2(e) of the Clayton Act as amended, through paying money or other things of value and furnishing such services as demonstrators and promotional facilities in varying amounts not proportionally equal by any test to some customers but not to others competing with them.

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

Mr. Cecil G. Miles for the Commission.

Blumberg, Singer & Blumenthal, of New York City, and *Davies, Richberg, Tydings & Landa*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Revlon Products Corporation (hereinafter sometimes designated as "respondent" or as "Revlon") has violated and is now violating the provisions of subsections (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 Revlon Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 745 Fifth Avenue, New York, New York.

PAR. 2. The respondent is now and for a number of years last past has been engaged in the business of manufacturing and selling cosmetics, beauty aids and toilet preparations, hereinafter sometimes referred to as cosmetic products or products. Said products are sold to customers with places of business located in the several states of the United States, other than the state in which respondent is located, and in the District of Columbia, for resale in said states and said District of Columbia. Respondent is a substantial factor in the cosmetic industry, in that its annual sales volume is in excess of \$30,000,000.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the aforesaid

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Clayton Act, as amended, having shipped its products or caused said products to be shipped or transported from its place of business located in the State of New York to said customers with places of business located in the several states of the United States other than the State of New York, and in the District of Columbia.

PAR. 4. In the course of said business in commerce, as aforesaid, 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 said cosmetic products which respondent manufactures, sells, or offers for sale; however, 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 cosmetic products. All of said payments, including those for cooperative advertising, demonstrator services, push money, or promotional services or facilities, shall be referred to hereinafter as "allowances."

PAR. 5. In addition, in the course of said business in commerce, as aforesaid, 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; however, 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. All of said services and facilities, including demonstrators and promotional facilities, shall be referred to hereinafter as "services."

PAR. 6. Specifically, respondent:

(1) Furnished or contributed to the furnishing of such services and made such allowances in some varying amounts to some customers, but did not do so, offer to do so, or otherwise accord or make available such services or allowances, or any alternative services or allowances, in any amount, to other competing customers.

(2) In furnishing or contributing to the furnishing of such services and making such allowances to some customers, did so to competing customers in amounts not equal to the same percentage of their net purchases and not proportionally equal by any other test; and did not offer or otherwise accord or make available such services or allowances to some of such customers in amounts equal to the largest of such percentages, or proportionally equal by any other test.

(3) In furnishing or contributing to the furnishing of such services and making such allowances to competing customers, required some of them to comply with certain terms and to furnish or make certain reciprocal services or payments, but did not require others to do so in any manner or amount, or required them to do so in a less burdensome manner or in lesser amounts, and not proportionally equal by any test.

PAR. 7. Illustrative of the acts and practices above alleged are those in which respondent engaged in 1954 in the Washington, D.C., trade area in transactions with about 118 competing customers.

Of these 118 customers, about 26 received services or allowances, or both, and about 92 did not, as alleged in Paragraph Six (1) above.

The services or allowances, or both, received by said 26 customers were in amounts which ranged from about 3.3% to 22.5% of net sales; as alleged in Paragraph Six (2) above. Among such allowances was one for advertising which not only varied as to percentage of sales but also varied as to percentage of the customers' advertising costs, ranging in the latter respect from about 69.4% to 100%.

Also, among said 26 customers, some were required to execute and perform promotional contracts while others were not; some were required to file retail sales reports while others were not; and some were required to pay a greater proportion of advertising costs; as alleged above in Paragraph Six (3) and in the immediate preceding subparagraph.

The same practices were engaged in by respondent in the trade areas of many other cities, such as, for example, Baltimore, Maryland, Cleveland, Ohio, Chicago, Illinois, and San Francisco, California.

PAR. 8. In determining the services and allowances granted to its 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 its different customers, which resulted in proportionally unequal, different and arbitrary terms.

PAR. 9. The acts and practices hereinabove 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 February 20, 1956, charging it with having violated Section 2 (d) and (e) of the Clayton Act, as

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amended by the Robinson-Patman Act. In lieu of submitting answer to said complaint, Revlon, Inc. (hereinafter called respondent), successor by merger to Revlon Products Corporation, appeared by counsel and entered into an agreement, dated June 27, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. 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) 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 Revlon, Inc., successor to Revlon Products Corporation, is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and

principal place of business located at 745 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 Revlon, Inc., a corporation, successor to Revlon Products Corporation, a corporation, and respondent's 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 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 17th day of August, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That Respondent Revlon, Inc., a corporation, successor to Revlon Products Corporation, 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.

Commissioner Anderson not participating.

IN THE MATTER OF
ISRAEL RETTINGER ET AL. DOING BUSINESS AS
RETTINGER RAINCOAT MFG. CO.

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

Docket 6534. Complaint, Mar. 22, 1956—Decision, Aug. 17, 1956

Consent order requiring manufacturers of rainwear in New York City to cease labeling their products with the word "Goodyear," thereby furnishing jobbers and retailers with means for misleading the public as to the identity of the manufacturer.

Mr. Terral A. Jordan for the Commission.

Bader & Belson, of New York City, for respondents.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on March 22, 1956, charging them with having violated the Federal Trade Commission Act by making false and misleading representations concerning the source of their rainwear products. In lieu of submitting answer to the complaint, respondents appeared by counsel and entered into an agreement, dated May 31, 1956, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director of the Bureau of Litigation. 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.

Respondents, pursuant to the aforesaid agreement, have 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 respondents waive 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