

Complaint

IN THE MATTER OF
O'CEDAR CORPORATIONORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2 (d)
AND 2 (e) OF THE CLAYTON ACT*Docket 6552. Complaint, May 11, 1956—Decision, Oct. 31, 1956*

Consent order requiring a Chicago corporation, one of the largest manufacturers in the United States of mops, waxes, polishes, and related products, to cease violating Secs. 2 (d) and (e) of the Clayton Act, through paying certain customers for, and furnishing to certain customers, services of sales persons who acted as demonstrators of its products, while not making such payments or services available on proportionally equal terms to all their competitors.

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

Mr. Frederick McManus for the Commission.

Norman, Engelhardt, Zimmerman & Prince, by *Mr. Harold W. Norman*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that O'Cedar Corporation, a corporation, hereinafter more particularly designated and described, has violated the provisions of subsection (d) and subsection (e) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 15) hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. O'Cedar Corporation is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 2246 West 49th Street, Chicago, Illinois.

PAR. 2. From 1941 to the present time, which is the period covered by the allegations of this complaint, respondent has been engaged in the business of manufacturing and selling mops and various types of waxes and polishes, together with other related products. Respondent is one of the three or four largest companies engaged in that business in the United States. Respondent manufactures its products at its place of business in Chicago, Illinois, and sells such products to purchasers, including department stores, located in all of the various states of the United States for resale within such places.

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PAR. 3. In the course and conduct of its business respondent has engaged and does now engage in commerce as "commerce" is defined in the Clayton Act as amended, having shipped its products or caused them to be shipped or transported from Illinois to purchasers located in other states of the United States.

PAR. 4. In the course and conduct of its business in commerce respondent paid or contracted for the payment of something of value to or for the benefit of some of its department store customers as compensation for services or facilities furnished by or through said department store customers in connection with their offering for resale or sale of various products sold to them by respondent and such payments were not made available on proportionally equal terms to all of its customers competing in the sale of respondent's products.

PAR. 5. The payments described in Paragraph Four were sums of money paid for the services of sales persons who have acted as demonstrators of respondent's products in connection with the resale of respondent's products by respondent's customers. Said payments for the services of demonstrators were not available on proportionally equal terms to all of respondent's other customers competing in the distribution of its products as alleged in Paragraph Four.

PAR. 6. The acts and practices of respondent as alleged above in Count I violates subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13).

Count 2

PARAGRAPH 1. The allegations of this paragraph are the same as the allegations in Paragraphs 1, 2, and 3 of Count I.

PAR. 2. In the course and conduct of its business in commerce respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish, furnishing, or contributing to the furnishing of services or facilities connected with the handling, resale, or offer for resale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included and illustrative of the services or facilities alleged in Paragraph Two were the services of sales persons who acted as demonstrators of respondent's products in connection with the resale of respondent's products by respondent's customers. The services of salespersons acting as demonstrators were not accorded on proportionally equal terms to all of respondent's customers in that:

(1) Respondent contracted to furnish or furnished said services or facilities to some department store customers and respondent did not offer to furnish or otherwise accord any such services to other competing customers.

(2) Respondent contracted to furnish and did furnish such services and facilities through personal negotiation by respondent with each customer availing itself of said services and facilities and said services and facilities were not furnished on proportionally equal terms to all such competing customers.

PAR. 4. The aforesaid acts and practices of respondent as herein alleged, are in violation of Section 2(e) of the Clayton Act as amended by the Robinson-Patman Act.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This matter is before the hearing examiner for final disposition of this proceeding pursuant to an agreement containing a consent order to cease and desist. The attorney supporting the complaint has also submitted a motion to amend the complaint by making American-Marietta Company, a corporation, a party respondent by reason of its being a successor to the respondent O'Cedar Corporation. The hearing examiner, prior to the issuance of this initial decision, gave consideration to said motion to amend the complaint and, being advised that the respondent had no objection, issued his separate order amending the complaint as requested by counsel in support of the complaint.

The agreement for a consent order entered into by American-Marietta Company, a corporation, and counsel in support of the complaint, disposes of all issues in this proceeding, and this agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondent American-Marietta Company admitted all the jurisdictional facts as alleged in the complaint, as amended, and agreed that the record may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement the respondent American-Marietta Company expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge

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or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent American-Marietta Company further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, as amended, shall constitute the entire record herein, that the complaint herein, as amended, may be used in construing the terms of the order issued pursuant to said agreement, and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same 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, and the hearing examiner makes the following jurisdictional findings and order:

1. Respondent American-Marietta Company (successor to O'Cedar Corporation) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 101 East Ontario Street, in the City of Chicago, State of Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the interest of the public.

ORDER

It is ordered, That respondent American-Marietta Company, a corporation, its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the sale or offering for sale of mops, waxes, or polishes, or in connection with the sale or offering for sale of other merchandise sold under the name of "O'Cedar," in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

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

2. Contracting to furnish, or furnishing, or contributing to the furnishing of any services or facilities connected with the handling, sale or offering for sale of any of respondent's said products to any purchaser from respondent upon terms not accorded to all competing purchasers on proportionally equal terms.

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 31st day of October 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent American-Marietta Company, 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.

IN THE MATTER OF
WM. H. WISE CO., INC., ET AL.¹

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

Docket 6288. Complaint, Jan. 17, 1955—Decision, Nov. 1, 1956

Order requiring a New York City seller of a correspondence course in beauty care, together with its parent corporation, to cease using a fictitious trade name—such as “Publishers’ Protective Service”—to collect and enforce their past-due accounts and representing it falsely as an independent organization.

Mr. William Tincher for the Commission.

Mr. Thomas B. Scott, of Washington, D.C., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The complaint in this proceeding alleges violations of the Federal Trade Commission Act, in that in substance said respondents have employed the device of a fictitious trade name, “Publishers’ Protective Service” for the purpose of collecting in the course of interstate commerce allegedly delinquent accounts due to the two corporate respondents. It is established without dispute between the parties that said “Publishers’ Protective Service” is in fact entirely owned and operated by the respondent John J. Crawley, who is registered under the said trade name as a collection agency in New York City. It is also undisputed that he is the president of each of the two respondent corporations, and the officer thereof who formulates, controls and manages all of their business policies. It is alleged in the complaint, however, that the use of this fictitious trade name by respondents does in fact deceive and mislead and also tends to deceive and mislead the public into believing that said “Publishers’ Protective Service” is an entirely independent and separate organization from that of the corporate respondents and is employed by them as such a separate organization to collect their accounts.

This initial decision finds generally that the facts alleged in the complaint which are material to this case have been proved by a preponderance of the evidence by counsel supporting the complaint, with the single qualification that the debts sought to be collected by respondents through the use of said fictitious trade name “Publish-

¹ Charges of misrepresenting the terms of payment for the course were settled by a consent order dated August 19, 1955, 52 F.T.C. 150.