

Complaint

53 F.T.C.

IN THE MATTER OF
ANAHIST CO., INC.

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

Docket 6524. Complaint, Mar. 6, 1956—Decision, Dec. 20, 1956

Consent order requiring a corporate manufacturer of medicinal preparations including "Anahist Tablets," in Yonkers, N.Y., to cease violating Sec. 2(d) of the Clayton Act by paying sums of money to sponsors of television programs for services and facilities furnished in the form of television advertising of Anahist products, while not making such payments available on proportionally equal terms, or any terms, to all other customers competing in the sale of Anahist products.

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

Mr. Donald R. Moore for the Commission.

Goldstein,, Judd & Gurfein, Mr. Nathaniel L. Goldstein and Mr. Morris A. Wirth of counsel, of New York City, for respondent.

COMPLAINT

This complaint is issued by the Federal Trade Commission against the respondent, Anahist Co., Inc., a corporation because the Commission has reason to believe the corporation has violated the provisions of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C., Section 13). The charges are as follows:

PARAGRAPH 1. Anahist Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York. It has its manufacturing plant and principal office at 21 Gray Oaks Avenue, Yonkers, New York.

PAR. 2. Anahist is engaged in the manufacture and sale of medicinal preparations, including Anahist Tablets, Anahist Atomizer, and Hist-O-Plus. These 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 within the United States to consumers. Among these customers are retail drug chains, independent retail drug stores and department stores.

PAR. 3. Anahist is now, and for many years has been, engaged in commerce, as that term is defined in the Clayton Act. It transports, or causes to be transported, its products from the state of manufacture to purchasers located in other states and the District of Columbia, as well as to purchasers in the state of manufacture. There is and has been a constant stream of trade and commerce in these products among various states and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce during the past six years, Anahist has contracted to pay, and has paid, money, goods, or other things of value to or for the benefit of certain of its customers. It has made these payments as compensation or in consideration for services or facilities furnished by or through these customers in connection with the sale or offering for sale of products manufactured, sold, or offered for sale by Anahist. But such payments or consideration have not been available on proportionally equal terms to all other customers competing in the sale and distribution of such products.

PAR. 5. Transactions between Anahist and United Cigar-Whelan Stores Corporation provide an example of the discriminations alleged in Paragraph 4. United-Whelan operates a chain of retail drug stores in New York, New York, as well as in other cities. Anahist has paid to United-Whelan, directly or indirectly, substantial sums of money for services and facilities furnished it by United-Whelan in the form of advertising of Anahist products on television programs sponsored by United-Whelan in New York, New York. These payments have been made and the services and facilities furnished in connection with the handling, sale, and offering for sale of Anahist products.

These payments were not available, however, on proportionally equal terms, or on any terms, to all other customers competing in the distribution and sale of Anahist products.

PAR. 6. The acts and practices of Anahist, as alleged in this complaint, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C., Section 13).

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent Anahist Co., Inc., a corporation, has violated the provisions of subsection (d) of Section 2 of the Clayton Act as amended (U.S.C., Title 15, Sec. 13) by contracting to pay and paying money, goods, or other things of value to certain of its customers as compensation or in consideration for services or facilities furnished by or through them in connection with the sale of respondent's products, without making such payment or consideration available on proportionally equal terms to all other customers competing in the sale and distribution of such products.

Specifically, the complaint alleges that, in connection with the handling, sale and offering for sale of respondent's products, respondent has paid to United Cigar-Whelan Stores Corporation substantial sums of money for services and facilities furnished it:

by said corporation in the form of advertising of respondent's products on television programs sponsored by United-Whalen, and that such or similar payments were not available on proportionally equal terms, or on any terms, to all other of respondent's customers competing in the sale and distribution of its products.

Answer to the complaint was duly filed, and thereafter respondent, its counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Litigation and transmitted to the Hearing Examiner for his consideration.

The agreement identifies respondent Anahist Co., Inc. as 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 21 Gray Oaks Avenue, Yonkers, New York.

The agreement provides, among other things, that said respondent admits all the jurisdictional facts alleged in the complaint and that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that respondent's answer to the complaint shall be considered as having been withdrawn and that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this 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 the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent, in said agreement, waives any further procedural steps before the Hearing Examiner and the Commission, the making of findings of fact or conclusions of law, and all of its rights to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully covers all the issues raised in the complaint, and adequately prohibits the acts and practices therein alleged to be in violation of Section 2(d) of the Clayton Act as amended. Accordingly, the Hearing Examiner finds this proceeding to be in the public interest, and accepts the Agreement Containing Consent Order To Cease And Desist as part of the record upon which this decision is based. Therefore,

It is ordered, That respondent Anahist 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 in commerce (as "commerce" is defined in the Clayton Act) of medicinal preparations and related products, do forthwith cease and desist from:

Paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for any radio or television advertising furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's products, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution or 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 20th day of December, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Anahist 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.

IN THE MATTER OF
MICHAEL CAMPAIOLA ET AL. DOING BUSINESS AS
L. B. C. WATCH CASE CO.

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

Docket 6620. Complaint, Aug. 28, 1956—Decision, Dec. 20, 1956

Consent order requiring manufacturers in New York City to cease misbranding watch cases of 13½ karat fineness by marking them on the back with the phrase "14 K."

Mr. Donald K. King and Mr. S. F. House for the Commission.
Mr. Herbert S. Greenberg, of New York City, for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1956, issued and subsequently served its complaint in this proceeding against respondents Michael Campaiola and Morris Lamm, individually and as copartners, trading and doing business as L. B. C. Watch Case Co., with their office and principal place of business located at 88 West Broadway, New York, New York.

On October 25, 1956, there was submitted to the undersigned hearing examiner an agreement between respondents and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the 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; and that the following order to cease and desist may be entered in this proceeding by the