

Decision

IN THE MATTER OF
STEPHEN F. WHITMAN & SON, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT*Docket 6560. Complaint, June 1, 1956—Decision, Jan. 18, 1957*

Consent order requiring a Philadelphia manufacturer of assorted chocolates and confections, including its prestige "Whitman's Sampler" package, with nation-wide distribution, to cease discriminating in price in violation of Sec. 2(a) of the Robinson-Patman Act through use of an annual cumulative quantity discount system under which individual outlets of chain retail stores were allowed discounts based on the aggregate annual purchases of the entire chain, thus qualifying them for the maximum 10% discount, while many independents, selling a greater quantity than the individual outlets with which they competed got no discount at all or at best no more than 2, 3 or 4 per cent.

Cecil G. Miles, Esq., for the Commission.

Norris, Lex, Hart & Eldredge, by *John Ross, Esq.*, of Philadelphia, Pa., and *Howrey & Simon*, by *Harold F. Baker, Esq.*, of Washington, D.C., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 1, 1956, charging it with having violated Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Respondent appeared by counsel and entered into an agreement, dated November 20, 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 made duly in accordance with such allegations. Said agreement further provides that respondent 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

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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 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 this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement 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 is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 4th & Race Streets, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

It is ordered, That the respondent Stephen F. Whitman & Son, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and distribution of its assorted chocolates and confections, or any other related products, in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Discriminating in price by means of an annual cumulative quantity discount system, or by using the combined purchases of the various outlets of a chain or group purchaser as a basis for determining any such discount, or by any other means, which results in selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with a purchaser paying the higher price in the resale of any of respondent's products of like

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grade and quality, when such discount results in a discrimination in price.

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 did, on the 18th day of January, 1957, 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.

IN THE MATTER OF
MARKET TIRE COMPANY ET AL.

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

Docket 6625. Complaint, Sept. 11, 1956—Decision, Jan. 25, 1957

Consent order requiring two corporate sellers of new and used automobile and truck tires in Washington, D.C., and Bethesda, Md., to cease using bait advertising in newspapers and other false claims as to prices, savings and discounts, guarantees, and quality; and false representations that certain older tires—most of them no longer manufactured—were "Factory Fresh" or "1956" stock.

Mr. Michael J. Vitale for the Commission.

Mr. Henry J. Fox of *Berge, Fox & Arent*, of Washington, D.C., for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on September 11, 1956, charging them with violation of the Federal Trade Commission Act in connection with the sale and distribution of new and used automobile and truck tires, as set forth in the complaint. After the issuance and service of said complaint and after the filing of answer for Market Tire Company of Maryland, Inc., and the respondents David Lawson and Allan Bratman, individually and as officers of Market Tire Company of Maryland, Inc., on November 29, 1956, an agreement containing consent order to cease and desist from the practices complained of was entered into with counsel supporting the complaint, which agreement purports to dispose of all the issues in this proceeding without hearing. This agreement has been duly approved by the Assistant Director and the Director of the Bureau of Litigation, and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration in accordance with Rule 3.25 of the Rules of Practice of the Commission.

It is noted that although the complaint only names one corporate respondent, Market Tire Company, a Maryland corporation, the aforesaid agreement names and is signed by two corporate respondents, Market Tire Company of Southeast, Inc., a Maryland corporation with its office and principal place of business located at New Jersey Avenue and M Streets, S.E., Washington, D.C., and Market Tire Company of Maryland, Inc., a Maryland corporation with its