

Decision

IN THE MATTER OF

BOURJOIS, INC.

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

Docket 6635. Complaint, Sept. 14, 1956—Decision, Mar. 5, 1957

Consent order requiring a New York City manufacturer of cosmetics, perfumes, and other beauty preparations to cease violating Sec. 2(d) of the Clayton Act by making payments for cooperative advertising, demonstrator services, and push money to competing customers in amounts which were not proportionally equal by any test, and by requiring some customer recipients to comply with certain terms and to furnish certain reciprocal services or payments while not requiring others to do so, or requiring them to do so in a less burdensome manner or in smaller amounts.

Mr. Donald K. King for the Commission.

Olwany, Eisner & Donnelly, of New York, N.Y., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent, in connection with the sale and distribution in commerce of cosmetics, perfumes, soaps and other beauty aids and toilet preparations, paid promotional and advertising allowances to certain of its customers in amounts which were not made available on proportionally equal terms to all other of its customers competing in the resale of such products, in violation of § 2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, § 13).

After the issuance of the complaint, 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 and the Assistant Director, Bureau of Litigation of the Commission, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement states that respondent Bourjois, 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 35 West 34th Street, New York, New York.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission

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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 and Rule 1 (VII) of the Amended Trade Practice Rules for the Cosmetic and Toilet Preparations Industry, promulgated September 10, 1954 (Title 16, C.F.R. 221.1(g)), 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 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 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 the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of § 2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C., Title 15, § 13). 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, Bourjois, 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:

Paying, or contracting to pay, to, or for the benefit of, any customer of respondent, anything of value as compensation or in consideration for advertising, display, demonstrator, promotional or other 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 resale of such products.

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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 5th day of March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Bourjois, 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
YARDS DEPARTMENT STORE ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket 6662. Complaint, Oct. 25, 1956—Decision, Mar. 5, 1957

Consent order requiring a department store in Trenton, N.J., to cease violating the Fur Products Labeling Act by advertisements in newspapers, etc., which failed to disclose the names of animals producing the fur in certain products, which set forth fictitious prices and represented regular prices as reduced therefrom, and which used comparative prices not based on current market values; and by failing to maintain adequate records on which such price claims were based.

Mr. S. F. House for the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on October 25, 1956, charging them with having violated the Fur Products Labeling Act and the rules and regulations issued thereunder, and the Federal Trade Commission Act, by reason of having falsely and deceptively advertised certain fur products. After being served with said complaint, respondents entered into an agreement, dated December 1, 1956, containing a consent order to cease and desist, purporting to dispose of all of this proceeding as to all parties without hearing. Said agreement for consent order, which has been signed by counsel supporting the complaint and by all respondents, and approved by the Director and Assistant Director of the Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice and Procedure.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with said agreement. It has also been agreed that the order to cease and desist issued in accordance