

IN THE MATTER OF
OTARION, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 3 OF
THE CLAYTON ACT

Docket 6624. Complaint, Sept. 11, 1956—Decision, Mar. 14, 1957

Consent order requiring a large manufacturer of hearing aid instruments at Dobbs Ferry, N.Y., with approximately 120 distributors located throughout the United States, to cease violating Sec. 3 of the Clayton Act by requiring its distributors not to handle competing products.

Mr. Edward S. Ragsdale and Mr. Kent P. Kratz for the Commission.

Benjamin, Galton & Robbins, by Mr. David S. Galton, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for other Purposes," commonly known as the Clayton Act, the Federal Trade Commission, on September 11, 1956, issued and subsequently served its complaint in this proceeding against respondents Otarion, Inc., and Leland E. Rosemond, individually and as officer of said corporation, with their office and principal place of business located at 185-7 Ashford Avenue, Dobbs Ferry, New York. Respondent's hearing aid instruments are nationally advertised, enjoy wide sales throughout the various states of the United States and respondent corporation is one of the large manufacturers and distributors of hearing aid instruments in the hearing aid industry.

On January 30, 1957, 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

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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 Commission without further notice to respondents, and, when so entered, it 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.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

Respondent Otation, 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 185-7 Ashford Avenue, Dobbs Ferry, New York. Respondent Leland E. Rosemond is an individual and is President-Treasurer and principal stockholder of respondent corporation with his office and principal place of business the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondent Otation, Inc., a corporation, its officers, agents, representatives and employees, and individual respondent Leland E. Rosemond, individually and as an officer of respondent corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids or other similar or related products in commerce, as "commerce," is defined in the Clayton Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for sale of any such products on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in, or sell, hearing aids

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or other similar or related products supplied by any competitor or competitors of respondents;

2. Enforcing or continuing in operation, or effect, any condition, agreement, or understanding in, or in connection with, any existing contract of sale, which condition, agreement, or understanding is to the effect that the purchaser of said products shall not use or deal in hearing aids or other similar or related products supplied by any competitor or competitors of the respondents.

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 14th day of March, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF
DANIEL H. SOBO, WAKEFERN FOOD CORPORATION,
AND TWIN COUNTY GROCERS, INC.

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

Docket 6633. Complaint, Sept. 13, 1956—Decision, Mar. 19, 1957

Consent order requiring a sugar broker and two wholesale grocery buying cooperatives doing business in New York and New Jersey to cease violating the brokerage provision of the Robinson-Patman Act by such transactions as those in which respondent broker, receiving from his seller principals 5¢ per 100 pounds of sugar sold in New York City and 7¾¢ per 100 pounds sold outside the city, rebated a portion of his commissions, amounting to 4¢ per 100 pounds, to respondent buyer cooperatives.

Mr. Edward S. Ragsdale and *Mr. Kent P. Kratz* for the Commission.

Mr. Samuel M. Sprafkin, of New York City, and *Mr. Sol L. Kesselman* and *Mr. Joseph A. Weisman* of *Weisman & Freedman*, of Newark, N.J., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on September 13, 1956, charging respondents with paying or receiving rebates, commissions, brokerage fees, or other compensation or allowances or discounts in lieu thereof in connection with the purchase and sale of sugar, in violation of the provisions of §2(c) of the Clayton Act (U.S.C., Title 15, §13), as amended by the Robinson-Patman Act approved June 19, 1936.

On December 10, 1956, respondents, their counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director and Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent Daniel H. Sobo is identified in the agreement as an individual, with his principal office and place of business located at Room 312, 80 Wall Street, New York, New York. Respondent Wakefern Food Corporation is identified in the agreement as a New Jersey corporation with its office and principal place of business located at 715 South Avenue East, Cranford, New Jersey, and respondent Twin County Grocers, Inc., as a New Jersey corporation