

Complaint

IN THE MATTER OF
THE VENDO COMPANYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT*Docket 6646. Complaint, Oct. 11, 1956—Decision, Sept. 5, 1957*

Consent order requiring the nation's largest manufacturer of soft drink vending machines, with main office in Kansas City, Mo., to make available to competitors the patents for coin-operated vending machines which it acquired by absorbing a major competitor, Vendorlator Manufacturing Company, of Fresno, Calif.; prohibiting it from acquiring for 10 years the capital stock or assets of any company in the United States making or selling vending machines built to dispense bottled drinks; and prohibiting it, after one year, from manufacturing vending machines under the Vendorlator patents except for replacement purposes, and from using on goods it makes or sells the trade-mark "VMC", to which it is to retain title and which it is to permit others to use on machines produced under the Vendorlator patents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent The Vendo Company (hereinafter referred to as "respondent") is a corporation organized and existing under the laws of the State of Missouri with its office and principal place of business at 7400 E. 12th Street, Kansas City, Missouri.

PAR. 2. Vendorlator Manufacturing Company (hereinafter referred to as "Vendorlator") is, or at all times pertinent herein was, a corporation organized and existing under the laws of the State of California with its office and principal place of business at 2550 S. Railroad Avenue, Fresno, California.

PAR. 3. Respondent is engaged in the production and sale of a variety of products in commerce, as "commerce" is defined in the Clayton Act. In the year ending December 31, 1955, respondent's sale of all products aggregated approximately \$20,700,000. Such production and sale in commerce included the production and sale of coin operated vending machines built to dispense bottled soft drinks. In the year ending December 31, 1955, respondent's sales of these products aggregated approximately \$11,500,000. Respondent

is, and prior to the acquisition described in Paragraph 5 hereof was the largest manufacturer of coin operated vending machines built to dispense bottled soft drinks in the United States.

PAR. 4. Prior to September 18, 1956, Vendorlator was engaged in the production and sale of a variety of products in commerce, as "commerce" is defined in the Clayton Act. In the year ending June 30, 1955, Vendorlator's sales of all products aggregated approximately \$11,000,000. Such production and sale in commerce included production and sale of coin operated vending machines built to dispense bottled soft drinks. In the year ending June 30, 1955, Vendorlator's sale of these products aggregated approximately \$7,000,000.

PAR. 5. There are approximately 16 companies in the United States engaged in the manufacture and sale of coin operated vending machines built to dispense bottled soft drinks. The combined sales of the respondent and Vendorlator for the year 1955 and for many years last past have accounted for over 50% of the market involved.

PAR. 6. On or about September 18, 1956, respondent acquired all the outstanding capital stock, assets and business of Vendorlator, including its patents and good will, in exchange for 267,464 shares of common stock of Vendo. The former shares of common stock of Vendorlator were eliminated and cancelled and Vendorlator was merged into The Vendo Company. Prior to said acquisition respondent and Vendorlator were competitors in the production and sale of coin operated vending machines built to dispense bottled soft drinks in the United States.

PAR. 7. The acquisition of the stock and assets of Vendorlator by respondent, as above described, may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of coin operated vending machines built to dispense bottled soft drinks in the United States.

PAR. 8. The foregoing acquisition, acts and practices of respondent as hereinbefore alleged and set forth constitute a violation of Section 7 of the Clayton Act. (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950.

Mr. John T. Walker and Mr. Joseph P. Dufresne for the Commission.

Covington & Burling, by Mr. Harry L. Shniderman, of Washington, D.C., and Gage, Hillix, Moore, Park & Jackson, of Kansas City, Mo., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Clayton Act, Section 7, (U.S.C. Title 15, Sec. 18) as amended and approved December 29, 1950, and Sec. 11 of said act (U.S.C. Title 15, Sec. 21), the Federal Trade

Commission on October 11, 1956, issued and subsequently served its complaint in this proceeding against respondent The Vendo Company, a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 7400 East Twelfth Street, Kansas City, Missouri.

After a number of hearings for the reception of evidence in support of the allegations of the complaint, all counsel jointly moved for a suspension of further hearings under the provisions of 3.25 of the Rules of Practice, which motion was granted for two weeks and thereafter, on July 24, 1957, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it 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 respondent that it has violated the law as alleged in the complaint.

Said agreement provides that it stems from disclosures at hearings before the hearing examiner in this proceeding to the effect that the acquisition questioned in the complaint arose out of the patent controversy between respondent and the former Vendorlator Manufacturing Company (now Fresno V Company), and that prior to the acquisition by respondent of the assets of the former Vendorlator Manufacturing Company, the latter had committed most of its production facilities to producing machines infringing a basic patent owned by Vendo and had actually manufactured and sold infringing machines in substantial quantities.

Said agreement provides that it is contended by respondent that the Vendorlator Manufacturing Company successfully competed in the manufacture and sale of vending machines built to dispense bottled drinks only because of its infringement of a basic patent

held by The Vendo Company and, that upon prosecution of its rights under the patent Vendo would have eliminated Vendorlator as a significant competitive entity in this line of commerce. Although the validity of respondent's patent and the claimed infringement by the Vendorlator Manufacturing Company were not adjudicated, a showing was made in the record that the Vendorlator Manufacturing Company probably had infringed upon a basic patent of respondent for a period of about two years, and at the time of the acquisition, more than eighty percent of the production of the Vendorlator Manufacturing Company was of such machines, and it, therefore, appears that the only assets that respondent should be required to divest are those relating to the production of non-infringing machines by the Vendorlator Manufacturing Company. The only important assets which are in this category and which would be of significant value to an actual or potential competitor of respondent are believed to be the patents dealt with in the order herein contained.

The following order requires the respondent to make available to the public all the patents acquired from Vendorlator Manufacturing Company. In the light of all the circumstances it would appear that the order is in the public interest and that competition would be stimulated by requiring the respondent to license to interested parties, whether they are existing competitors or new entries in the field, the former Vendorlator patents rather than sell them under an order of divestiture, which would have the effect of again limiting the availability of these patents to a single manufacturer.

Such agreement provides that the following order may be entered in this proceeding by the Commission without further notice to respondent. 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 the best possible basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent The Vendo Company, is a corporation existing and doing business under the laws of the State of Missouri, with its office and principal place of business located at 7400 East Twelfth Street, Kansas City, Missouri.

The Vendorlator Manufacturing Company, a wholly-owned subsidiary of The Vendo Company, is a corporation existing and doing

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business under the laws of the State of California, with its office and principal place of business at 2550 South Railroad Avenue, Fresno, California.

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

ORDER

Respondent, The Vendo Company, *Is hereby ordered and directed* as follows:

1. *Divestiture of Patents.* Respondent shall divest itself of the exclusive right to manufacture, use or sell machines under the teachings of the following three groups of patents acquired in the purchase of assets challenged by the complaint:

(a) Patents relating to models based on the opensided cylinder design (Models VMC-149, VMC-190, VMC-231, VMC-242, VMC-302, and VMC-340):

<i>Patent Number</i>	<i>Title</i>
2,290,275 -----	Bottle Vending Machine
2,597,290 -----	Retainer for Vendable Merchandise
2,693,300 -----	Vending Machine
2,680,049 -----	Delivery and Retaining Mechanism for Merchandise Dispensing Apparatus

(b) Patent relating to models based on the rotating basket design (Models VMC-27 and VMC-33):

<i>Patent Number</i>	<i>Title</i>
2,610,100 -----	Coin Controlled Vending Machine

(c)

<i>Patent Number</i>	<i>Title</i>
2,307,450 -----	Vending Machine
2,391,866 -----	Circuit Controller
2,482,245 -----	Dispensing Apparatus
2,633,958 -----	Dispensing Apparatus
2,648,417 -----	Coin-Controlled Mechanism
2,667,880 -----	Coin Changing Mechanism
2,675,901 -----	Coin Control Protective System for Vending Machines
2,727,654 -----	Coin Conditioned Selective Vending Machine

Respondent shall accomplish such divestiture by offering any applicant, for any one or more of the above patents or group of patents, a non-exclusive license to make, use and sell machines under the teachings of the patent or patents involved. Upon receipt of a written request for a license under the provisions of this paragraph, respondent shall advise the applicant in writing of the royalty which

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it deems reasonable for the patent or group of patents involved in the request. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date the written request is received by respondent, the applicant therefor shall have the right to submit the question of reasonable royalty to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and the respondent shall consent to such arbitration. Unless the parties to the arbitration proceeding agree upon an arbitrator within thirty (30) days after the applicant has initiated the arbitration proceeding, a single arbitrator shall be appointed by the American Arbitration Association in accordance with its rules then obtaining; the award of the arbitrator shall be final and binding upon both parties. The reasonable royalty, as once finally determined by the arbitrator, shall apply to all licenses of the same patent or group of patents thereafter granted, and any licensee who had previously obtained a license under the patent or group of patents shall have the right, at his option, to have the royalty rate determined by the arbitrator applied retroactively to the date of the application to the arbitrator which resulted in such determination.

(d) Beginning one year after the effective date of this order, respondent shall discontinue manufacturing any vending machines, or parts thereof, except those made specifically for replacement use, under any of the patents listed above in parts (a) and (b).

2. *Divestiture of Exclusive Use of Trade-mark.* Beginning one year after the effective date of this order, respondent shall not employ the trade-mark "VMC" on goods which it manufactures or sells. Respondent shall retain title to the trade-mark "VMC," and shall permit any licensee under the provisions of paragraph 1 above to employ such trade-mark on the vending machines built to dispense bottled soft drinks which are produced under either group of patents listed in parts (a) and (b) of paragraph 1 above. Respondent, in granting such a license, shall permit the licensee to inform the trade that the vending machines produced under the license are manufactured and sold under patents formerly owned by Vendorlator Manufacturing Company of Fresno, California, and the trade-mark may be used to identify the patented machines.

3. *Prohibition Against Future Acquisitions.* Respondent shall cease and desist for a period of ten (10) years after the effective date of this order from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, purchase of physical assets, or acquisition of stock or other share capital, any interest in

any company in the United States which manufactures and sells vending machines built to dispense bottled drinks.

4. *Effective Date.* The provisions of this order shall become effective immediately upon entry of the order by the Commission.

5. *Retention of Jurisdiction.* Jurisdiction of this proceeding is retained so that respondent may at any time hereafter petition the Commission for construction or modification of this order, which the Commission will consider, and upon proper showing by respondent, allow to the extent it finds such construction or modification to be warranted and consistent with Section 7 of the Clayton Act.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 5th day of September, 1957, become the decision of the Commission.

IN THE MATTER OF
MAXWELL DISTRIBUTING COMPANY, INC., ET AL.

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

Docket 6745. Complaint, Mar. 22, 1957—Decision, Sept. 5, 1957

Order requiring sellers in Newark, N.J., of perfumes, toilet waters, and colognes to cease representing falsely in advertisements on the labeling of their products that fictitious and excessive "list prices" were the usual retail prices and that their products were compounded in France.

Mr. Harry E. Middleton, Jr., for the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of the Federal Trade Commission Act, as amended, it being charged, in substance, that the respondents have committed unfair and deceptive acts and practices and unfair methods of competition in commerce by misrepresenting the origin and prices of cosmetics, such as perfumes, colognes, and toilet waters which it sells directly or indirectly to the purchasing public. This decision is rendered against all respondents upon the default of all such respondents.

From the record it appears that each of the respondents, other than Hyman Greenglass, was duly served with a copy of the complaint, either on March 29, 1957, or on March 30, 1957, and that the respondent Hyman Greenglass was duly served therewith on April 29, 1957. Although each of such respondents, other than Hyman Greenglass, were in default of answer, other pleading or other appearance, either in person or by counsel, because of delay in obtaining service on said respondent Hyman Greenglass, the initial hearing as set in the "Notice" portion of the complaint for May 28, 1957, in Newark, New Jersey, was indefinitely postponed on May 14, 1957, by an order providing for a subsequent resetting of such hearing on at least ten days' notice to the parties, as provided by Section 3.16(e) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, with the precise time and place thereof to be designated therein. On June 3, 1957, each and all of the respondents then being in default of answer, other pleading or other appearance, either in person or by counsel, the hearing examiner issued an order setting a hearing for June 21, 1957, at ten o'clock a.m. (local time), in Room 358, Federal Trade Commission Building, Sixth and Pennsylvania Avenue, N.W., Washington, D.C., for the purpose of