

Complaint

IN THE MATTER OF
LEAF BRANDS, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLGED VIOLATION OF
SECS. 2(a), (c), AND (d) OF THE CLAYTON ACT

Docket 6749. Complaint, Mar. 26, 1957—Decision, Sept. 13, 1957

Consent order requiring a manufacturer of candy and chewing gum in Chicago to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act as amended by paying sums of money as compensation or allowance for advertising furnished by one chain store customer while not offering comparable allowances to all its competitors; and dismissing Counts I and II of the complaint charging violation of Secs. 2(a) and (c) of the Act.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Frederic T. Suss for the Commission.

Bell, Boyd, Marshall & Lloyd, by *Mr. Mark S. Massel*, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that Leaf Brands, Inc., is violating and has violated the provisions of subsections (a), (c) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Leaf Brands, Inc., hereinafter referred to as respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1155 North Cicero Avenue, Chicago, Illinois.

PAR. 2. Respondent is now and since 1946 has been engaged in the manufacture and sale of various candy and chewing gum products. Respondent sells said candy and chewing gum products through brokers to different purchasers, including jobbers and retailers located in the various States of the United States and the District of Columbia. Respondent pays to each such broker a five percent brokerage fee on all sales to customers located in the areas assigned to him by respondent.

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PAR. 3. In the course and conduct of its business respondent has engaged in commerce, as "commerce" is defined in the Clayton Act as amended in that respondent ships its products, or causes them to be shipped, from its place of business to said purchasers located in States other than the State of origin of such shipments.

PAR. 4. In the course and conduct of its said business in commerce, respondent is now and has been in competition with other corporations, partnerships, individuals, and firms engaged in manufacturing, selling, and distributing candy and chewing gum products.

PAR. 5. In the course and conduct of its business as above described, respondent has sold and now sells candy and chewing gum products to some purchasers at substantially higher prices than the prices charged competing purchasers for such products of like grade and quality.

For example, respondent from time to time grants discounts of four, five and six percent on certain of its products to some of its customers but does not grant or offer such discounts to others of its customers who compete with those so favored in the sale and distribution of respondent's products.

PAR. 6. The effect of such discriminations in price made by respondent, as set forth in Paragraph Five hereof, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy, or prevent competition with respondent and with purchasers of respondent who receive the benefit of such discriminations.

PAR. 7. The acts and practices of the respondent, as alleged above, violate subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of subsection (c) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 8. Paragraphs 1 to 4, inclusive, of Count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 9. In the course and conduct of its business as above described, respondent instead of following its regular practice of selling its products through and by means of brokers, has paid or granted, directly and indirectly, to some of its customers commissions, brokerage, or other compensation, or allowances, or discounts in lieu thereof, in connection with purchases of products by such customers from respondent in their own names and for their own accounts for resale.

For example, during the years 1954, 1955 and 1956, respondent granted and paid to Food Fair Stores, Inc. of Philadelphia, Pennsylvania, in connection with purchases of respondent's products made on its own account, advertising allowances of \$19,249.00, part of which amount was paid in lieu of the brokerage fee customarily paid by respondent to its broker on such purchases.

PAR. 10. The acts and practices of the respondent, as alleged above, violate subsection (c) of Section 2 of the Clayton Act as amended.

COUNT III

Charging violation of subsection (d) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 11. Paragraphs 1 and 2 of Count I hereof are hereby repeated and made a part of this count as fully and with the same force and effect as though here again set forth in full.

PAR. 12. In the course and conduct of its business respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended in that respondent ships its products, or causes said products to be shipped, from its place of business to said purchasers so located, some of whom are in competition with each other in the sale and distribution of said products.

PAR. 13. In the course and conduct of its business in the commerce, as herein described, respondent paid, or contracted to pay, something of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished or contracted to be furnished, by or through such customers, in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionally equal terms by respondent to all customers competing in the sale and distribution of its products.

For example, the respondent contracted to pay and did pay to Food Fair Stores, Inc. of Philadelphia, Pennsylvania, the amounts of \$8,233.00 during the year 1956, \$7,683.00 during the year 1955, and \$3,333.00 during the year 1954, as compensation or as allowances for advertising furnished by or through Food Fair Stores, Inc. in connection with its offering for sale or sale of products sold to it by respondent. The terms of the contracts, under which these allowances were granted, were devised and advanced by Food Fair Stores, Inc. and have no basis on which the allowances could be made available on proportionally equal terms to competitors of Food Fair Stores, Inc. In fact such compensation or allowances were not offered or otherwise made available on proportionally equal

terms, or on any other terms, to all other customers competing with Food Fair Stores, Inc. in the sale and distribution of respondent's products.

PAR. 14. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in connection with the sale of candy and chewing gum products. An agreement has now been entered into by counsel supporting the complaint and respondent which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and 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.

The complaint is in three counts, and the proposed order is based upon Count III. With respect to Counts I and II, it appears from the agreement that these Counts probably could not be sustained, and the agreement provides for their dismissal. In the circumstances such action seems appropriate. As to Count III, the order appears entirely adequate. The agreement and order are therefore accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent, Leaf Brands, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1155 North Cicero Avenue, Chicago, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

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Decision

ORDER

It is ordered, That respondent, Leaf Brands, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in, or in connection with, the sale of candy and chewing gum products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment or allowance of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, unless such payment or allowance is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That Count I and Count II of the complaint be, and they hereby are, dismissed.

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 13th day of September, 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
RAYMOND ARNOLD TRADING AS UNITED MIRROR
LABORATORIES, RESEARCH DIVISION OF MAKE-UR-
OWN MIRROR COMPANY

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

Docket 6732. Complaint, Feb. 21, 1957—Decision, Sept. 14, 1957

Consent order requiring a manufacturer of materials and equipment for making mirrors in Springfield, N.J., to cease misrepresenting in advertising and periodicals and circulars the labor and cost involved in making mirrors, and representing falsely by use of the words "Laboratories" and "Research" in his trade name that he owned a laboratory with scientists and technicians engaged in mirror manufacturing.

Mr. Brockman Horne for the Commission.

Mr. Bernard R. Lafer, of Newark, N.J., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of the Federal Trade Commission Act, by the use of grossly exaggerated, false, misleading and deceptive statements and representations with respect to machinery, equipment and materials used for manufacturing and resilvering mirrors. These products, it is alleged, are sold and shipped in interstate commerce.

After the issuance of the complaint, respondent, his 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 of the Commission's Bureau of Litigation, and thereafter transmitted to the Hearing Examiner for consideration.

The agreement identifies respondent Raymond Arnold as an individual, trading as United Mirror Laboratories, Research Division of Make-Ur-Own Mirror Company, his present address being 26 Irwin Street, Springfield, New Jersey.

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 shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official