

Complaint

IN THE MATTER OF
McCORMICK & COMPANY, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT

Docket 6470. Complaint, Nov. 21, 1955—Decision, Sept. 17, 1957

Consent order requiring a seller in Baltimore, Md. of spices, extracts, teas, coffees, and condiments on a nation-wide basis, with sales for 1954 approaching \$44,000,000, to cease violating Sec. 2(d) of the Clayton Act through such practices as payment of a sum of money to a Philadelphia chain of food stores as compensation for advertising respondent's products, while not offering proportionally equal allowances to all competitors of the favored customer.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Anderson, Barnes & Coe, by *Mr. G. C. A. Anderson*, of Baltimore, Md., and *Mr. James W. Cassidy*, of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, McCormick & Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located in Baltimore, Maryland.

PAR. 2. Respondent is now and has been engaged in the business of producing and selling food products. Respondent's principal products are spices, extracts, teas, coffees and condiments. Respondent sells such products to the retail grocery trade through grocery wholesalers, and, in addition, respondent sells direct to retail chain store organizations. Respondent sells spices and extracts in the eastern part of the United States under the trade name "McCormick," and sells spices, extracts and coffees in the western part of the United States under the trade name "Schilling." Sales made by respondent of its products are substantial, amounting in the fiscal year ended November 30, 1954, to \$43,764,725.

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. Respondent ships its products, or causes them to be transported, from its principal place of business in the State of Maryland to customers located in the same and in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

PAR. 5. For example, during the year 1955, respondent contracted to pay and did pay the sum of \$3,750.00 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, as compensation or as an allowance for advertising or other service or facility furnished by or through such customer in connection with its offering for sale or sale of products sold to it by the respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products with Food Fair Stores, Inc.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 21, 1955, issued and subsequently served its complaint in this proceeding against respondent McCormick & Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at Baltimore, Maryland.

One hearing was held after which there was, on August 2, 1957, 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 com-

plaint 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; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, 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 McCormick & Company, Inc., is a corporation existing and doing business under the laws of the State of Maryland, with its office and principal place of business located at Baltimore, Maryland.

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

ORDER

It is ordered, That respondent McCormick & Company, Inc., a corporation, its officers, employees, agents, and representatives, directly or through any corporate or other device, in or in connection with the sale of spices, extracts, teas, coffees, condiments and other products in commerce, as "commerce" is defined in the aforesaid 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 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 spices, extracts, teas, coffees, condiments and other products sold to him by respondent, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such spices, extracts, teas, coffees, condiments and other products.

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 17th 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.

Decision

IN THE MATTER OF
KRASNOW BELT CO., INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6742. Complaint, Mar. 15, 1957—Decision, Sept. 17, 1957

Consent order requiring a manufacturer in Long Island City, N.Y., to cease attaching to men's and boys' belts, labels carrying fictitious and exaggerated prices, thereby placing in the hands of retailers a means of deceiving the purchasing public as to the usual retail price.

Mr. Morton Nesmith and Mr. John J. Mathias supporting the complaint.

Mr. Erwin L. Corwin, of New York City, for respondents.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents herein on March 15, 1957 charging them with violation of the Federal Trade Commission Act as set forth in said complaint. After service of the complaint, respondents and their attorney entered into an agreement with counsel supporting the complaint for a consent order to cease and desist from the practices complained of, which agreement purports to dispose of all the issues in this proceeding. 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 Morton Nesmith and John J. Mathias have both signed the agreement as counsel supporting the complaint, whereas only John J. Mathias is named as counsel supporting the complaint in the body of the agreement. This irregularity is not believed to affect the validity of the agreement.

Respondents Krasnow Belt Company, Inc., a corporation, and Kenneth I. Krasnow and David Krasnow individually and as officers of the corporate respondent in 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 the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further that respondents 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