

Complaint

IN THE MATTER OF
TOPPS CHEWING GUM, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(a) AND 2(d) OF THE CLAYTON ACT*Docket 6747. Complaint, Mar. 26, 1957—Decision, Oct. 26, 1957*

Consent order requiring a Brooklyn, N.Y., manufacturer of bubble gum and "Clor-Aid" chiclet type of gum containing chlorophyll, to cease discriminating in price in violation of Secs. 2(a) and 2(d) of the Clayton Act by such practices as (a) selling its "Bazooka" brand bubble gum and picture card bubble gum to some jobbers at a 5% discount from the prices charged others; and (b) paying a chain of food stores \$2,200 as compensation for advertising, etc., in connection with its products, while not making comparable offers to the chain's retail competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that Topps Chewing Gum, Inc., is violating and has violated the provisions of subsections (a) 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, Topps Chewing Gum, 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 New York, with its principal office and place of business located at 254 36th Street, Brooklyn, New York.

PAR. 2. Respondent is now, and since 1947 has been, engaged in the manufacture and sale of chewing gum products, including gum commonly referred to as "bubble gum," and a chiclet type of gum containing chlorophyll sold under the trade name "Clor-Aid." Respondent sells said chewing gum products to different purchasers, including jobbers and retailers, located in the various states of the United States and the District of Columbia.

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

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to be shipped, from its place of business to said purchasers so 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 chewing gum products.

PAR. 5. In the course and conduct of its business as above described, respondent has sold and now sells 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 sells "Bazooka" brand bubble gum and picture card bubble gum to some jobbers for 70¢ and 72¢ per 120 count box, respectively. Respondent sells said products to other competing jobbers at said prices less a discount of 5%.

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

PAR. 8. 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. 9. 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. 10. In the course and conduct of its business in commerce, as herein described, respondent paid, or contracted to pay, something of value to or for the benefit of some of its customers as compensa-

tion 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.

During the past several years, and continuing to the present time, respondent has made such payments to many of its retailer customers in consideration of their advertising and otherwise promoting the resale of its chewing gum products.

For example, during the year 1953, respondent contracted to pay and did pay to Food Fair Stores, Inc. of Philadelphia, Pennsylvania, \$2,200 as compensation or as allowances for advertising or other service or facility furnished by or through Food Fair Stores, Inc., in connection with its offering for sale or sale of products sold to it by respondent. Said payments were not offered or otherwise made available by respondent on proportionally equal terms to all other retailer customers competing in the sale and distribution of respondent's products with said favored customers.

PAR. 11. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended.

Mr. Fredric T. Suss for the Commission.

Rosenman, Goldmark, Colin & Kaye, of New York, N.Y., by *Mr. Seymour D. Lewis*, for respondent.

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 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

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

1. Respondent, Topps Chewing Gum, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 254 - 36th Street, Brooklyn, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent, Topps Chewing Gum, 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 chewing gum products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of said chewing gum products of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser, which purchasers, in fact, compete in the resale or distribution of such products.
2. 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.

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 26th day of October, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

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IN THE MATTER OF
PHILADELPHIA CHEWING GUM CORPORATION
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (a) OF THE CLAYTON ACT

Docket 6748. Complaint, Mar. 26, 1957—Decision, Oct. 26, 1957

Consent order requiring a manufacturer of bubble gum in Havertown, Pa., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by granting certain jobbers a 5% "supply house" discount in addition to the 5% discount or its equivalent in premiums granted all its jobbers and dealers.

COMPLAINT

The Federal Trade Commission, having reason to believe that Philadelphia Chewing Gum Corporation is violating and has violated the provisions of subsection (a) 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:

PARAGRAPH 1. Respondent, Philadelphia Chewing Gum Corporation, hereinafter referred to as respondent, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Eagle and Lawrence Roads, Havertown, Pennsylvania.

PAR. 2. Respondent is now and since 1947 has been engaged in the manufacture and sale of chewing gum products commonly referred to as "bubble gum." Respondent sells said chewing gum products to different purchasers, including jobbers and retailers, located in the various States of the United States and the District of Columbia.

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 chewing gum products.

PAR. 5. In the course and conduct of its business as above described, respondent has sold and now sells chewing gum products to some purchasers at substantially higher prices than the prices