

Complaint

54 F.T.C.

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

charged competing purchasers for such products of like grade and quality.

For example, respondent sells its chewing gum products to its jobbers and retailers granting them either a five percent discount or its equivalent in premiums, but the respondent grants an additional five percent discount, sometimes called a "supply house" discount, to several of its jobbers who are in competition with other jobbers in the resale and distribution of said 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 line 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.

Mr. Fredric T. Suss for the Commission.

Blank, Rudenko & Klaus, of Philadelphia, Pa., by *Mr. Edwin S. Rome*, 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 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.

Decision

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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, Philadelphia Chewing Gum Corporation, is a corporation 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.

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

ORDER

It is ordered, That respondent, Philadelphia Chewing Gum Corporation, 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:

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.

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.

Decision

IN THE MATTER OF
SURF SALES COMPANY, INC., ET AL.

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

Docket 6612. Complaint, Aug. 20, 1956—Decision, Oct. 28, 1957

Order requiring Chicago sellers of cameras, electric appliances, and other merchandise, to cease furnishing to operators and members of the public various plans of merchandising—including push cards and instructions for their use—which involved the operation of games of chance or lottery schemes in the sale of the goods to the consuming public.

Mr. William A. Somers for the Commission.

Mr. Horace J. Donnelly, Jr., of Washington, D.C., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

On August 20, 1956, complaint herein was issued against respondents charging them with unfair acts and practices in commerce in violation of the Federal Trade Commission Act in the sale of merchandise in commerce by games of chance, gift enterprises and lottery schemes. Individual respondent Thomas F. Marsh was charged with being president of corporate respondent and individual respondent Samuel Specter was charged with being manager thereof, and they were alleged to direct and have dominant control of the sales activities of the corporate respondent. Respondents' answer admits corporate existence, address of corporate respondent, and that the respondent Marsh was president thereof, and generally denies all other allegations of the complaint, except that the corporation respondent was engaged in the business of selling merchandise to the public, and for that purpose it distributes literature describing such merchandise, with sales prices, and inviting orders therefor. As separate additional affirmative defenses respondents allege that the complaint fails to state a cause of action, that the Federal Trade Commission lacks jurisdiction, that the transactions were intrastate rather than interstate, that the Federal Trade Commission Act is unconstitutional and void, and that the present action denies the constitutional right to due process of law.

Three hearings were held resulting in 99 pages of transcript and six exhibits. At the first hearing, both individual respondents appeared in response to subpoenas, but declined to answer any questions after stating their names and addresses because their answers might tend to incriminate them—in other words, both took the Fifth Amendment. Taking of evidence closed March 26, 1957, and there-