

Complaint

54 F.T.C.

IN THE MATTER OF
THE SWEETS COMPANY OF AMERICA, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(d) OF THE CLAYTON ACT

Docket 6460. Complaint, Nov. 21, 1955—Decision, Nov. 7, 1957

Consent order requiring a candy manufacturer in Hoboken, N.J., to cease violating Sec. 2(d) of the Clayton Act by making special allowances to certain customers—such as those granted for promotion of anniversary sales to food chains in Philadelphia, Pa., and Washington, D.C.—without making them available to competing customers on proportionally equal terms.

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, The Sweets Company of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of candy products, the principal ones of which are sold under the trade name "Tootsie." Respondent sells its candy products through brokers, distributors, and direct to retail customers, including retail chain store organizations. Sales made by respondent of its products are substantial, amounting in the year 1954 to \$12,486,065.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act as amended. Respondent sells and causes its products to be transported from the respondent's principal place of business, located in New Jersey, to customers located in other States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent 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 sale and distribution of respondent's products.

PAR. 5. For example, during the year 1955 respondent contracted to pay and did pay the sum of \$800 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, and \$100 to the Giant Food Shopping Center, Inc., of Washington, D.C., as compensation or as an allowance for advertising or other service or facility furnished for sale or sale of products sold them by the respondent. Such compensation or allowances were 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., or Giant Food Shopping Center, Inc.

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

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

Becker, Ross & Stone, by Mr. Murray C. Becker, of New York, N.Y., for respondent.

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 The Sweets Company of America, Inc., a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

One hearing was held after which there was, on September 6, 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 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

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this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; and 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.

1. Respondent The Sweets Company of America, Inc., is a corporation existing and doing business under the laws of the State of Virginia, with its office and principal place of business located at Hoboken, New Jersey.

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

ORDER

It is ordered, That respondent The Sweets Company of America, 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 candy 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 candy 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 candy and other products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Sec. 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner did, on the 7th day of November, 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
HARRY G. KRIEGEL TRADING AS SUPERIOR PRODUCTS

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

Docket 6670. Complaint, Apr. 8, 1957—Decision, Nov. 7, 1957

Order requiring a seller in New York City to cease representing falsely in advertisements in newspapers and periodicals and material supplied to his distributors that attachment of his colored sheet of transparent plastic designated "Color V" to a black-and-white television set would produce the same effect as a color television; would eliminate glare and prevent and relieve eyestrain caused by viewing television; and was an electronic device.

Mr. Brockman Horne for the Commission.

Mr. Harry G. Kriegel, of New York, N.Y., *pro se*.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves charges that respondent Harry G. Kriegel, an individual trading as Superior Products, has violated the Federal Trade Commission Act by using false, misleading, and deceptive advertising by mail to sell and has sold in interstate commerce throughout the country a product designated as "Color V." The complaint was filed April 8, 1957, and was lawfully served thereafter upon respondent, who in due course answered by letter dated July 26, 1957, which was filed and treated as an answer on July 30, 1957, respondent contending, in substance, therein that he was not the owner of Superior Products and that at any rate the sale of said "Color V" screens was discontinued June 1, 1956.

Upon proper order served upon the parties, initial hearing was held in Washington, D.C., whereat Commission's counsel appeared but respondent did not appear or present any evidence in his behalf under his answer or otherwise. Commission's counsel presented evidence in support of his case-in-chief and rested. The hearing examiner thereupon closed the proceeding for the taking of evidence, and Commission's counsel at the close of the hearing having submitted his proposed findings, conclusion and order, respondent was given to and including September 9, 1957, in which to submit his proposed findings, conclusion and order, of which due notice was given. Respondent did not file any such proposals.

Upon due and impartial consideration of the whole record, it is found that the material allegations of the complaint are sustained