

IN THE MATTER OF
GROVE LABORATORIES, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE CLAYTON AND FEDERAL TRADE COMMISSION ACTS

Docket 6743. Complaint, Mar. 18, 1957—Decision, Nov. 30, 1957

Consent order requiring the manufacturer of "Fitch" hair and scalp preparations to cease discriminating in price by paying to certain favored wholesale customers, in addition to the customary 15% discount, a 10% "warehouse allowance" which was not granted to their competitors; and to cease requiring some retailers to purchase specific minimum quantities of its preparations while allowing their favored competitors to purchase in any quantity.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (15 U.S.C., Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Grove Laboratories, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 8877 Ladue Road, St. Louis 24, Missouri.

PAR. 2. The respondent is now and has since 1919 been engaged directly or indirectly in the manufacture, sale, and distribution of drug preparations known as Grove products and hair and scalp preparations known as Fitch products. For the fiscal year ending April 30, 1955, the gross sales of Grove Laboratories, Inc., amounted to \$9,934,285.

Respondent classifies the customers to whom it sells and distributes its products into several categories. The principal classifications are (1) wholesale accounts such as drug-service, grocery, miscellaneous, drug merchandise, beauty and barber, and (2) retail accounts consisting of chain drugstores, chain grocery stores, chain variety stores, drug merchandisers, independent drugstores, independent de-

partment stores, independent super markets, grocery stores, independent variety stores, and the United States Government.

PAR. 3. In the course and conduct of its business the respondent has been and is now engaged in commerce as "commerce" is defined in the Clayton Act, as amended, in that it ships or causes to be shipped hair and scalp preparations referred to as Fitch products produced by it, from the state or states in which said items are produced or packed to purchasers thereof located in other states and the District of Columbia; and there is and has been at all times a continuous current of trade and commerce in said items between and among the several States of the United States and the District of Columbia.

PAR. 4. The respondent sells and distributes Fitch products in the aforesaid commerce to customers, some of whom are in competition with each other in the resale of said products.

PAR. 5. Respondent, in the course and conduct of its said business in commerce, as aforesaid, has been and is now discriminating in price between purchasers of Fitch products distributed by said respondent by selling said products to some purchasers at higher prices than it sells said products of like grade and quality to other purchasers and some of said other purchasers are engaged in active and open competition with the less favored purchasers in the resale of Fitch products in the United States.

PAR. 6. Specifically, respondent offers for sale, sells and distributes Fitch products to all customers buying directly from it at a list price less a 15% discount. However, certain customers classified as wholesale accounts, are given an additional substantial discount of 10% which is designated as a warehouse allowance, and this 10% discount is not given to other customers also classified as wholesale accounts. Some of the wholesalers receiving the additional 10% allowance are in competition with wholesalers not receiving said allowance.

PAR. 7. The effect of the respondent's aforesaid discriminations in price between said different purchasers of its said products of like grade and quality sold in the manner and method aforesaid, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the aforesaid favored and nonfavored purchasers are engaged, or to injure, destroy or prevent competition between said favored and nonfavored purchasers, or with the customers of either of them.

PAR. 8. The foregoing alleged discriminations in price made by respondent Grove Laboratories, Inc., are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

Complaint

54 F.T.C.

COUNT II

PAR. 9. Paragraphs 1 and 2 are hereby adopted and made a part of this count as fully as if herein set out verbatim.

PAR. 10. In the course and conduct of its business the respondent has been and is now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act in that it ships or causes to be shipped Fitch products, referred to in Paragraph 2 hereof, from the state in which said items are produced or packed to purchasers thereof located in other States of the United States and the District of Columbia; and there is and has been at all times mentioned a continuous current of trade and commerce in said items between and among the several States of the United States and the District of Columbia.

PAR. 11. The respondent sells and distributes Fitch products in the aforementioned commerce to customers, some of whom are in competition with each other in the resale of such products.

PAR. 12. Respondent, in the course and conduct of its said business in commerce, as aforesaid, offers for sale, sells and distributes Fitch products to certain customers in any quantity desired by said customer, while other customers desiring the same privilege are required to purchase in specific minimum quantities, which are greater than the quantity the more favored customers are permitted to buy. Thus, the non-favored customers are required to either purchase in greater quantities than the favored customers purchase to obtain the same price as their favored competitors who are not required to purchase specific minimum quantities or they must of necessity buy from a wholesaler at a price higher than respondent's price.

PAR. 13. This practice of granting unequal treatment to competing purchasers places an undue burden upon the non-favored purchasers and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between retail dealers, and has unduly restrained, hindered, suppressed and eliminated competition therein in the sale and distribution of Fitch products in commerce within the meaning of the Federal Trade Commission Act and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Frederick McManus, Esq., for the Commission.

Mr. William Blum, Jr., of Washington, D.C. and *Shepley, Kroeger, Fisse and Shepley* of St. Louis, Mo., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 18, 1957, charging it with having violated Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act and also Section 5 of the Federal Trade Commission Act. Respondent appeared by counsel and entered into an agreement, dated September 24, 1957, containing a consent order to cease and desist, disposing of all the issues in this proceeding without hearing, which agreement has been duly approved by the Director and the Assistant Director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondent waives 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 and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said 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, that said order to cease and desist 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of

the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8877 Ladue Road, St. Louis 24, Missouri.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act and the Federal Trade Commission Act. This proceeding is in the interest of the public.

ORDER

It is ordered, That the respondent, Grove Laboratories, Inc., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device in connection with the sale of hair and scalp preparations of like grade and quality in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Directly or indirectly discriminating in price between different purchasers by selling to any of its purchasers at higher net prices than it sells to other purchasers who compete in the resale and distribution of said hair and scalp preparations.

It is further ordered, That the respondent Grove Laboratories, Inc., a corporation, its officers, representatives, agents and employees, directly or indirectly or through any corporate or other device in connection with the sale of hair and scalp preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Offering or granting more favorable treatment to any customer than to competing customers by requiring different minimum quantities to be purchased.

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 did, on the 30th 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.

Decision

IN THE MATTER OF
FOTO MURALS OF CALIFORNIA, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT*Docket 6708. Complaint, Jan. 9, 1957—Decision, Dec. 9, 1957*

Order dismissing, for failure to sustain the allegations, complaint charging that use in advertising of the terms "photo mural", "Foto Mural", etc., by a Beverly Hills, Calif., dealer, for photogravure reproductions of photographs, designed as wall decorations or coverings, constituted false advertising.

Mr. Edward F. Downs and Mr. Garland S. Ferguson for the Commission.

Adelman & Schwartz, of Beverly Hills, Calif., for respondents.

INITIAL DECISION DISMISSING COMPLAINT BY EARL J. KOLB, HEARING
EXAMINER

This proceeding is before the undersigned hearing examiner for final consideration, upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises, makes the following findings as to the facts and conclusions drawn therefrom and order:

1. Respondent Foto Murals of California, Inc., is a California corporation located at 8401 Wilshire Boulevard, Beverly Hills, Calif. It is engaged in the sale and distribution in interstate commerce of reproductions of photographs designed to sell as wall decorations or wall coverings. These products are referred to as "Photo Murals," "Foto Murals," and "Muralettes."

2. In the production of its murals the corporate respondent causes an original color transparency to be made of a scene to be reproduced on a mural. This transparency is subjected to further photographic processing to obtain four color separation negatives which are used to make printing plates of specified color for transfer to respondent's