

IN THE MATTER OF
NATIONAL PAPER TRADE ASSOCIATION OF THE
UNITED STATES, INC., ET AL.

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

Docket 5592. Complaint, Oct. 5, 1948—Decision, Dec. 27, 1957

Order dismissing complaint as to certain respondents, in conformity with the decree of the Court of Appeals for the Second Circuit of January 9, 1957, 240 F. 2d 341, which set aside insofar as it related to those respondents, the Commission's cease and desist order of September 24, 1954, 51 F.T.C. 307, prohibiting concerted price fixing for fine and wrapping paper.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Earl W. Kintner, *Mr. Floyd O. Collins* and *Mr. Peter J. Dias* for the Commission.

Barshay & Frankel, of New York City, for Shuttleworth Wollny Co., Inc. and Fred Free, Jr.

Wechsler & Solodar, of New York City, for Imperial Bag & Paper Co., Inc. and Liberty Bag & Paper Co.

Javits, Levitan & Held, of New York City, for Robins Paper Co. of Baltimore City.

SUPPLEMENTAL ORDER DISMISSING THE COMPLAINT AS TO CERTAIN
RESPONDENTS AND STRIKING THEIR NAMES FROM THE ORDER TO CEASE
AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers of certain respondents, substitute answers of other respondents, testimony relating to certain respondents and documentary evidence and stipulations relating to other respondents, in support of and in opposition to the allegations of the aforesaid complaint, taken before a hearing examiner of the Commission theretofore duly designated by it; and the hearing examiner having thereafter filed his recommended decision in which he concluded that all of the respondents, with the exception of respondents Robert Engel and Graham Paper Co. had violated section 5 of the Federal Trade Commission Act as alleged; and the matter having thereafter come on to be heard by the Commission on the complaint, as amended, the answers, substitute answers, evidence, stipulations, recommended decision of the hearing examiner

and the exceptions thereto, briefs in support of and in opposition to said complaint, and oral argument of counsel; and,

The Commission having duly considered the matter, and being fully advised in the premises, made its findings as to the facts, and, on the 24th day of September 1954, issued its order in which it dismissed the complaint as to respondents Graham Paper Co., Pittsburgh Paper Association, Robert Engel, Morris Paper Co., Anderson Paper & Twine Co., Clarence E. Dobson, and as to all of the respondents named in the complaint only by reference to the list of members of the respondent trade associations attached as exhibits to the complaint and who were not specifically named as respondents in the complaint or in the first paragraph of the order to cease and desist, and, ordered all other respondents to cease and desist from the acts and practices which the Commission had found to be unlawful; and,

Respondents Metropolitan Bag & Paper Distributors Association, Inc., A. E. MacAdam & Co., Inc., John H. Free, Inc., Shuttleworth Wollny Co., Inc., S. Posner Sons, Inc., Yorkville Paper Co., Inc. and Fred Free, Jr. having filed in the United States Court of Appeals for the Second Circuit their joint petition for the review of and to set aside the aforesaid order to cease and desist insofar as it related to them; and,

Respondents Harlem Paper Products Corp., Imperial Bag & Paper Co., Inc., Daniel W. Margolin, doing business as Liberty Bag & Paper Co., and David Kasson, having filed in the United States Court of Appeals for the Second Circuit their joint petition for the review of and to set aside the aforesaid order to cease and desist insofar as it related to them; and,

Respondent Robins Paper Co. of Baltimore City (named in the complaint as Robins Paper Co., Inc.), having filed in the United States Court of Appeals for the Fourth Circuit its petition for the review of and to set aside the aforesaid order to cease and desist insofar as it related to it; and that circuit, acting upon a motion filed by the Commission, having removed and transferred the said petition for review, together with all pleadings and other papers pertaining thereto to the U.S. Court of Appeals for the Second Circuit, which had acquired exclusive jurisdiction of the subject matter; and,

The U.S. Court of Appeals for the Second Circuit having heard these several and separate petitions for review on briefs and oral argument and having thereafter, on the 9th day of January 1957, handed down its decision setting aside the aforesaid order to cease and desist as it related to petitioners Shuttleworth Wollny Co., Inc., Imperial Bag & Paper Co., Inc., Daniel W. Margolin, doing business

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as Liberty Bag & Paper Co., Robins Paper Co. of Baltimore City (named in the complaint as Robins Paper Co., Inc.) and Fred Free Jr., and affirming said order to cease and desist as to the remaining petitioners, and, on the 19th day of March 1957, entered its final decree setting aside the aforesaid order to cease and desist as it related to the aforesaid petitioners and dismissing the said petitions for review filed, as aforesaid, by Metropolitan Bag & Paper Distributors Association, Inc., A. E. MacAdam & Co., Inc., John H. Free, Inc., S. Posner Sons, Inc., Yorkville Paper Co., Inc., Harlem Paper Products Corp. and David Kasson, and affirming and enforcing said order to cease and desist as to these said petitioners; and,

Respondents Metropolitan Bag & Paper Distributors Association, Inc., Yorkville Paper Co., Inc., A. E. MacAdam & Co., Inc., John H. Free, Inc. and S. Posner Sons, Inc., having thereafter, on the 13th day of June 1957, and respondents Harlem Paper Products Corp. and David Kasson, having thereafter on the 17th day of June 1957, filed in the Supreme Court of the United States their respective petitions for a writ of certiorari to the U.S. Court of Appeals for the Second Circuit, to review the aforesaid decree of that court affirming the said order to cease and desist issued against them by the Commission as aforesaid; and

The Supreme Court of the United States having, on the 14th day of October 1957, denied the aforesaid petitions for writ of certiorari; and,

The Commission being of the opinion that its said order to cease and desist, issued as aforesaid, should be brought into conformity with that portion of the said decree of the U.S. Court of Appeals for the Second Circuit in which the court set aside the aforesaid order to cease and desist insofar as it related to Shuttleworth Wollny Co., Inc., Imperial Bag & Paper Co., Inc., Daniel W. Margolin, doing business as Liberty Bag & Paper Co., Robins Paper Co. of Baltimore City (named in the complaint as Robins Paper Co., Inc.) and Fred Free, Jr.

Now, therefore, it is ordered, That the complaint be, and it hereby is, dismissed as to respondents Shuttleworth Wollny Co., Inc., Imperial Bag & Paper Co., Inc., Daniel W. Margolin, doing business as Liberty Bag & Paper Co., Robins Paper Co. of Baltimore City (named in the complaint as Robins Paper Co., Inc.) and Fred Free, Jr.; and

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It is further ordered, That the names of respondents Shuttleworth Wollny Co., Inc., Imperial Bag & Paper Co., Inc., Daniel W. Margolin, doing business as Liberty Bag & Paper Co., Robins Paper Co. of Baltimore City (named in the complaint as Robins Paper Co., Inc.) and Fred Free, Jr. be, and they hereby are, stricken from the aforesaid order to cease and desist issued on the 24th day of September 1954, as aforesaid.

IN THE MATTER OF
STANDARD MOTOR PRODUCTS, INC.

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

Docket 5721. Complaint, Dec. 20, 1949—Decision, Dec. 27, 1957

Order requiring a seller in Long Island City, N.Y., of automotive replacement parts to jobbers who resold to garages, service stations, fleet owners, and other jobbers, to cease discriminating in price in violation of section 2(a) of the Clayton Act, by means of a retroactive volume rebate plan under which large volume purchasers and members of group buying organizations were granted rebates on their total annual purchases in addition to the customary 2 percent cash discount, with result that they were charged lower prices than their smaller competitors.

Mr. Eldon P. Schrup for the Commission.

Mr. Edward S. St. John, of New York, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging that the respondent Standard Motor Products, Inc., a corporation, has discriminated in price between different purchasers of its products in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, sec. 13). The price differentials which are charged to be in violation of the Clayton Act arise from respondent's pricing practices, involving the granting of an annual retroactive volume rebate to its customers, and also in the granting of such retroactive volume rebate to group purchasers on the basis of their aggregate purchases instead of upon the individual purchases of the members. The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers, is not disputed by the respondent, but was instead defended on the basis that the pricing practices of respondent have not resulted in any injury to competition, and that respondent's prices, discounts and allowances were made to meet competition. No attempt was made by respondent to justify its price differentials on the basis of differences in cost of manufacture, sale, or delivery.

This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel and oral argument thereon. The hearing examiner has given consideration to the proposed findings as to the facts