

Complaint

IN THE MATTER OF
ALLEN V. SMITH, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a)
OF THE CLAYTON ACT

Docket 6877. Complaint, Aug. 23, 1957—Decision, Jan. 22, 1958

Consent order requiring a processor and packer of dried food products in Marcellus Falls, N.Y., to cease discriminating in price in violation of section 2(a) of the Clayton Act by such transactions as selling dried peas and beans to The Great Atlantic & Pacific Tea Co. of America for resale in the Baltimore area at prices lower than those charged other direct-buying retailers in the area and lower than those charged wholesalers who resold to A & P's competitors.

Mr. William Smith and *Mr. James R. Fruchterman* for the Commission.

Mr. Nathan J. Goldrich, of New York City, for respondent.

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 (U.S.C., Title 15, sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Allen V. Smith, Inc., 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 located in Marcellus Falls, N.Y.

PAR. 2. Respondent is a processor and packager of dried food products, which consist for the most part of peas, beans, and pearled barley.

Respondent sells its dried food products of like grade and quality to a large number of purchasers located throughout the United States for use, consumption, or resale therein.

Respondent processes and packages its dried food products at its plants located at Marcellus Falls and Martisco, N.Y., Sylvania, Ohio, Garfield, Wash., and Greeley, Colo.

PAR. 3. In the course and conduct of its said business, respondent is now, and for many years has been, shipping its dried food products

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from the States in which they are processed and packaged to purchasers located in other States, in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. Respondent sells its packaged dried food products directly to wholesale food dealers, to the Great Atlantic & Pacific Tea Co. of America, and also directly to retail food dealers.

The Great Atlantic & Pacific Tea Co. of America resells respondent's packaged dried food products directly to the consuming public through its own retail stores.

The wholesale food dealers resell respondent's packaged dried food products to retail food dealers, who in turn resell to the consuming public as do other retail food dealers purchasing directly from respondent.

PAR. 5. Under the respondent's system of distribution there is actual competition between the Great Atlantic & Pacific Tea Co. of America and those retail dealers who purchase the respondent's packaged dried food products from wholesalers as well as those retail dealers who purchase these products directly from the respondent.

PAR. 6. The respondent has in the past and is at the present time discriminating in the prices charged to various purchasers of certain of its dried food products, including packaged dried peas and beans of various types, by charging higher prices to some of its purchasers than it does to other purchasers for merchandise of like grade and quality.

For example, respondent Allen V. Smith, Inc., has sold large quantities of packaged dried food products, including various kinds of dried peas and beans, on numerous occasions to the Great Atlantic & Pacific Tea Co. of America, hereinafter referred to as the A & P Tea Co., for resale by its retail stores which are located in or near Baltimore, Md. Said sales to the A & P Tea Co. were made at prices consistently and substantially lower than the prices charged to other direct buying retail dealers competing with the A & P in the Baltimore, Md. area, for dried packaged peas and beans of like grade and quality. Moreover, such sales to the said A & P Tea Co. were made at prices lower than those charged to wholesale food dealers purchasing said products for resale to retailers who compete with the A & P Tea Co. in and around the Baltimore, Md., area.

The discrimination in price mentioned above is not a fixed and certain discount but varies with each sale and with each item and is in the nature of a special price granted solely to the A & P Tea Co.

PAR. 7. The effect of such discrimination in price has been or may be substantially to lessen competition in the lines of commerce in which

respondent's purchasers are engaged, and to injure, destroy, or prevent competition between respondent's favored and nonfavored purchasers and between respondent's favored purchaser, or purchasers, and the customers of its nonfavored purchasers, as alleged and described herein.

PAR. 8. Said discriminations in price constitute a violation of subsection (a) of section 2 of the aforesaid Clayton Act, as amended.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent, Allen V. Smith, Inc., a corporation, with having violated the provisions of subsection (a) of section 2 of the Clayton Act (U.S.C., Title 15, sec. 13), as amended by the Robinson-Patman Act approved June 19, 1936. The respondent was duly served with process and time for answer was extended and initial hearing canceled pending negotiations of counsel for a consent agreement.

On November 26, 1957, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement containing consent order to cease and desist," which had been entered into by and between the respondent and his attorney, and William Smith and James R. Fruchterman, counsel supporting the complaint, under date of November 26, 1957, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by the Bureau.

On due consideration of the said "Agreement containing consent order to cease and desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with section 3.25 of the Commission's rules of practice for adjudicative proceedings and that by said agreement the parties have specifically agreed that:

1. Respondent is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Marcellus Falls, State of New York.

2. Pursuant to the provisions of the Clayton Act, the Federal Trade Commission, on August 23, 1957, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of

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jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Respondent waives:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

Upon due consideration of the complaint filed herein, and the said "Agreement containing consent order to cease and desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement containing consent order to cease and desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the person of the respondent corporation; that the complaint states a legal cause for complaint under the Clayton Act as amended, both generally and in each of the particular charges alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the full disposition of all the issues in this proceeding, such order to become final only if and when it becomes the order of the Commission; and that said order, therefore, should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Allen V. Smith, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of packaged dried food products, in commerce, as "commerce" is defined in the

Clayton Act (U.S.C., Title 15, sec. 13), as amended, do forthwith cease and desist from:

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

2. Discriminating in the price of such products of like grade and quality by selling to any retailer at net prices lower than the net prices charged any wholesaler who competes, or whose customers compete, with such retailer in the resale and distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner in this proceeding, based on an agreement for consent order executed by the respondent and counsel in support of the complaint; and

It appearing that said initial decision recites that the complaint states a legal cause of action under the Federal Trade Commission Act, whereas, in fact, the complaint charges a violation of section 2(a) of the Clayton Act (15 U.S.C. sec. 13), as amended by the Robinson-Patman Act; and

The Commission being of the opinion that this clerical error should be corrected:

It is ordered, That the initial decision of the hearing examiner be, and it hereby is, amended by substituting the words "Clayton Act, as amended" for the words "Federal Trade Commission Act" in the last paragraph preceding the order to cease and desist.

It is further ordered, That the initial decision as so modified be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent Allen V. Smith, Inc., a corporation, 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 contained in the aforesaid initial decision.

IN THE MATTER OF
SILVERCRAFT CO., INC., ET AL.

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

Docket 6887. Complaint, Sept. 11, 1957—Decision, Jan. 22, 1958

Consent order requiring a seller of cutlery in Boston, Mass., to cease selling with the words "Made in England" etched on the blades and "FINE SHEFFIELD CUTLERY, Sheffield, England" printed on the display cartons, cutlery made with handles imported from Japan on which the word "Japan" was concealed in assembling them with steel blades and tines imported from England; and to cease selling other cutlery assembled from domestic blades and tines imported from Japan without disclosing the foreign source of the handles.

Mr. Edward F. Downs and *Mr. Thomas A. Sterner* for the Commission.

Mr. Simon Queen, of Boston, Mass., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misrepresenting certain cutlery products sold by them, in violation of the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that respondents admit 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, respondents 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 respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and pro-