

IN THE MATTER OF
HAMBURG BROS., INC.

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

Docket 6721. Complaint, Feb. 5, 1957—Decision, Apr. 30, 1958

Order dismissing—for the reason that price differences were justified on the basis of cost of sale or sale of distress merchandise or were so small that they could not substantially lessen competition—complaint charging the exclusive wholesale distributor of RCA television receivers to retail dealers in a tri-State area covering parts of Pennsylvania, Ohio, and West Virginia, with discriminating in price in violation of subsection 2(a) of the Clayton Act by selling television receivers to some of its customers at higher prices than to their competitors.

Mr. Cecil G. Miles and *Mr. James R. Fruchterman*, supporting the complaint.

Kaplan, Finkel & Roth and *Mr. Paul J. Winschel* and *Reed, Smith, Shaw & McClay* of Pittsburgh, Pa., for respondent.

SECOND INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

PRELIMINARY STATEMENT

Commission complaint was issued February 5, 1957, charging the respondent with violation of section 2(a) of the Clayton Act as amended in connection with the sale of television receivers. Answer was filed August 19, 1957, which admitted (1) the corporate set up (2) that respondent was engaged in business as a wholesale distributor of household appliances including television receivers as alleged in the complaint, (3) that respondent's said business was substantial, totaling approximately \$20 million annually. The other allegations of the complaint were denied.

In an initial decision filed September 20, 1957, the complaint was dismissed without prejudice. This action was based on motion of respondent and answer thereto by counsel supporting the complaint. The answer did not oppose the motion to dismiss and gave the reasons, which were: (1) since the issuance of the complaint, the data in regard to respondent's pricing practices had been submitted to and reviewed by the accounting division of the Bureau of Investigation of the Commission, (2) that division after a review of the data submitted had reported that respondent's pricing practices, challenged in the complaint, were justified in all significant respects and (3) in

view of this report the Bureau of Litigation did not think the public interest justified proceeding further. The data in regard to respondent's pricing practices submitted by respondent was not at that time examined by the hearing examiner, nor was it made a part of the official record for consideration by the Commission.

In an order issued November 12, 1957, the Commission vacated the initial decision and remanded the case to the hearing examiner for further proceedings looking toward the development of an official record on the basis of which the merits of the case could be determined.

Since the remand, the data submitted by respondent in justification of its pricing practices together with the report thereon by the accounting division mentioned above has been admitted into the record by stipulation as respondent's exhibit No. 1. With the filing of said stipulation, respondent moved that the documentary material submitted by it in justification of its pricing practices be sealed, impounded, or otherwise held confidential and safe from disclosure to persons other than the hearing examiner, members of the Commission and its staff. The ground stated was that the disclosure of such information to the public would be prejudicial to the business of respondent. Counsel supporting the complaint did not oppose the motion and the hearing examiner included such a provision in the order admitting respondent's exhibit No. 1 into evidence. An additional stipulation, dated December 30, 1957, and covering all material allegations of the complaint not admitted in the answer was entered into and admitted into the record. Both sides waived the filing of proposed findings, conclusions and order and submitted the matter for a decision on the record as above set forth. The hearing examiner therefore makes the following findings as to the facts, conclusions and order.

FINDINGS AS TO THE FACTS AND CONCLUSIONS

1. Respondent Hamburg Bros., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Pennsylvania. It is engaged in business as a wholesale distributor of various household appliances, including television receivers, radios, electric washing machines, electric dryers, vacuum cleaners, toasters and other items. Its principal place of business is located at 213 Galveston Avenue, Pittsburgh, Pa. Respondent also maintains branch offices and warehouses in the cities of Youngstown, Ohio, and Wheeling, W. Va., from which sales and deliveries are made.

Findings

54 F.T.C.

2. Respondent sells and distributes its products to retail dealers in a tri-state area covering parts of Pennsylvania, Ohio, and West Virginia. It is the exclusive wholesale distributor of RCA television receivers in this area in which respondent does a substantial wholesale business, with sales totaling approximately \$20 million annually.

3. In the course and conduct of its business as aforesaid respondent is now and for the past several years has been engaged in commerce as "commerce" is defined in the Clayton Act, having sold and distributed its products, including television receivers, obtained from manufacturers located in the various States of the United States and transported said products, or caused the same to be transported, across State lines either to its places of business located in Pittsburgh, Pa., Youngstown, Ohio, and Wheeling, W. Va., or to its customers located in said States. Said products were and are sold for use, consumption or resale within the various States of the United States.

4. In the course and conduct of its business in television receivers during the year 1956, respondent sold said receivers to some of its customers at higher prices than it sold its said receivers of like grade and quality to other customers who were competitively engaged in the resale of said products within the United States with customers paying the said higher prices.

5. It has been stipulated in the record of this proceeding that the price differences made by respondent to competing customers of television receivers of like grade and quality, during the year 1956, constitute price discriminations prohibited by subsection (a) of section 2 of the Clayton Act as amended except as the same are justified by reason of differences in the cost of sale resulting from the different methods and quantities in which such television receivers are sold to respondent's customers as reflected in the cost justification studies and material submitted by respondent and set forth in respondent's exhibit No 1.

6. It is therefore found that the facts in regard to respondent's pricing practices in the sale in interstate commerce of television receivers of like grade and quality to competing customers in said tri-state area establish a prima facie case of violation of subsection (a) of section 2 of the Clayton Act as amended. Unless respondent has successfully rebutted the prima facie case by showing justification of its pricing practices in accordance with the provisions of said act, an order to cease and desist should be issued. Such justification, if shown, is shown in respondent's exhibit No.1.

7. Respondent's exhibit No. 1 has been reviewed and considered in detail. The differences in price between competing customers were based on a division of respondent's television receiver customers into two groups. In group I were those customers purchasing more than a certain dollar amount of such merchandise per year from respondent. In group II were those customers purchasing less than that amount of such merchandise per year from respondent. Respondent sold television receivers to their customers in group I at a substantially lower price per receiver than it sold television receivers of like grade and quality to their customers in group II. There are included in this exhibit affidavits of certain salesmen of respondent and an article in Fortune magazine which have some bearing on the issues. The statements in the affidavits and in the magazine article must be accepted at their face value because they went into the record by agreement and there is no evidence to the contrary. The report of the accounting division of the Commission's Bureau of Investigation, which is a part of respondent's exhibit No. 1 finds that except for a small number of receivers, the price differences in favor of respondent's customers in group I have been justified on the basis of cost of sale or on the basis of a sale of distress merchandise. The hearing examiner is in agreement with this finding. Considering the volume of respondent's business with both group I and group II customers, the price differences in favor of those customers in group I in those sales which have not been cost justified or justified on the basis of a sale of distress merchandise are so small, figured either on a percentage basis or on a total dollar basis, that they could not substantially lessen, injure, destroy or prevent competition between respondent's customers.

ORDER

It is therefore ordered, That the complaint herein be and the same hereby is dismissed without prejudice to the right of the Commission to take such other action against respondent in the future as the facts may warrant.

DECISION OF THE COMMISSION

The Commission having determined that the hearing examiner's initial decision, filed January 22, 1958, dismissing the complaint without prejudice constitutes an appropriate disposition of this proceeding:

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

IN THE MATTER OF
TARGET SPORTSWEAR, INC., ET AL.

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

Docket 6995. Complaint, Dec. 17, 1957—Decision, Apr. 30, 1958

Consent order requiring a manufacturer in New York City to cease violating the Wool Products Labeling Act by falsely labeling men's jackets as "all wool;" failing to tag certain wool products and to tag others in the manner required, abbreviating required information on tags on some, and failing to set forth separately on labels on certain jackets the constituent fibers contained in interlinings.

Mr. John T. Walker for the Commission.

Mr. Murray L. Halpern, of New York, N.Y., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding men's jackets and other wool products sold by them, in violation of the Wool Products Labeling Act and the rules and regulations promulgated thereunder and 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 proposed order and being of the opinion that they provide an adequate