

Complaint

54 F.T.C.

IN THE MATTER OF
SUNKIST GROWERS, INC.

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

Docket 6595. Complaint, July 19, 1956—Decision, May 8, 1958

Consent order requiring a Los Angeles producer of fresh and frozen fruit juices to cease discriminating in price in violation of section 2(d) of the Clayton Act by paying broadcasting companies for time furnished to certain favored grocery chains for their own advertising purposes in return for which the participating chains gave in-store promotions to respondent's products in their stores located in the trade area reached by the radio or TV station utilized, without making compensation for such benefits available on proportionally equal terms to all the competitors of the favored customers.

Mr. J. Wallace Adair and Mr. William R. Tincher for the Commission.

Pope, Ballard & Loos, by Mr. Karl D. Loos, Mr. Dickson R. Loos and Mr. P. C. King, Jr., of Washington, D.C., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that Sunkist Growers, Inc., a corporation, hereinafter referred to as respondent, 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 as follows:

PARAGRAPH 1. Respondent Sunkist Growers, Inc., is a corporation organized, existing, and doing business under the laws of the State of California with its principal office and place of business located at 707 West Fifth Street, Los Angeles, Calif.

PAR. 2. Respondent is now and for a number of years has been engaged in the business of selling and distributing its products, including fresh and frozen juices, in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers, including independent grocers and grocery chainstores, located throughout some of the States of the United States and in the District of Columbia.

PAR. 3. In the course of said 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 the offering for sale or sale of products sold to them by respondent, and payments were not made available on proportionally equal terms to all other customers competing in the distribution of respondent's products.

Among the payments alleged herein were payments made by respondent to certain broadcasting companies for the benefit of certain favored customers of respondent as compensation and in consideration for promotional services or facilities furnished by these favored customers in connection with the offering for sale and sale of respondent's products. Said benefits consisted of time furnished through such broadcasting companies to the favored customers for said customers' own advertising purposes. The examples set forth in paragraphs 4 through 6 herein are illustrative of the methods by which respondent made such payments to certain favored customers and failed to make them available to its other customers.

PAR. 4. American Broadcasting-Paramount Theaters, Inc. (and certain of its subsidiaries and affiliates), hereinafter referred to as "ABC," serving as a medium or intermediary between respondent and other manufacturers and distributors of grocery products on the one hand, and certain grocery chains on the other hand, introduced a "mass merchandising" plan for TV in 1952, and a "radiodizing" plan for radio in 1955 in the metropolitan New York City area. Similar plans have been introduced by ABC in other metropolitan areas since that time. Under these plans ABC entered into agreements with certain grocery chains which provided that said grocery chains were to receive free TV time, and/or radio time, for the purpose of their own advertising, the value of such free time varying from \$750 per week for the smallest grocery chain to approximately \$9,500 per week for the largest grocery chain participating. In return the participating grocery chains agreed to give in-store promotions to the aforesaid products of respondent in their stores located in the trade area reached by the ABC radio or TV station utilized. Thereafter, ABC solicited a number of manufacturers and distributors of grocery products, including respondent, to purchase TV and/or radio time over its facilities at the regular rate by offering as an extra inducement the above referred to in-store promotions in the stores of the participating grocery chains located in the trade area reached by the ABC radio or TV station utilized.

Using these plans, respondent has entered into contracts in the following amounts with ABC which entitled it to TV and/or radio time and in-store promotions in stores of the participating grocery chains:

Complaint

54 F.T.C.

ABC station	Location	Dates	Approximate amount paid by respondent
WABC-TV.....	New York City.....	Aug. 1952 to Aug. 8, 1954....	\$62,247

Compensation for in-store promotional services furnished by respondent's grocery chain customers who participated in the plans as above described is included in the above payments made by respondent to ABC. Such compensation was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with the favored customer or customers in the sale and distribution of respondent's products.

PAR. 5. Columbia Broadcasting System (and certain of its subsidiaries and affiliates), hereinafter referred to as "CBS," serving as a medium or intermediary between respondent and other manufacturers and distributors of grocery products on the one hand, and certain grocery chains on the other hand, introduced a "super marketing" plan in the metropolitan New York City area in 1951. Similar plans have been introduced by CBS in other metropolitan areas since that time. Under these plans CBS entered into agreements with certain grocery chains which provided that said grocery chains were to receive free radio time for the purpose of their own advertising, the value of such free time varying from \$100 per week for the smallest grocery chain to approximately \$4,700 per week for the largest grocery chain participating. In return the participating grocery chains agreed to give in-store promotions to the aforesaid products of respondent in their stores located in the trade area reached by the CBS radio station utilized. Thereafter, CBS solicited a number of manufacturers and distributors of grocery products, including respondent, to purchase radio time over its facilities at the regular rate by offering as an extra inducement the above referred to in-store promotions in the stores of the participating grocery chains located in the trade area reached by the CBS radio station utilized.

Using these plans, respondent has entered into contracts in the following amounts with CBS which entitled it to radio time and in-store promotions in stores of the participating grocery chains:

CBS station	Location	Dates	Approximate amount paid by respondent
WCBS.....	New York City.....	June 1, 1954 to Oct. 20, 1955..	\$39,596

Compensation for in-store promotional services furnished by respondent's grocery chain customers who participated in the plans as above described is included in the above payments made by respondent to CBS. Such compensation, or allowance, was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with the favored customer or customers in the sale and distribution of respondent's products.

PAR. 6. National Broadcasting Co. (and certain of its subsidiaries and affiliates), hereinafter referred to as "NBC," serving as a medium or intermediary between respondent and other manufacturers and distributors of grocery products on the one hand, and certain grocery chains on the other hand, introduced a merchandising plan called "Chain Lighting" in the metropolitan New York City area in 1951. Similar plans have been introduced by NBC in other metropolitan areas since that time. Under these plans NBC entered into agreements with certain grocery chains which provided that said grocery chains were to receive free radio time for the purpose of their own advertising, the value of such free time varying from \$100 per week for the smallest grocery chain to approximately \$6,600 per week for the largest grocery chain participating. In return the participating grocery chain agreed to give in-store promotions to the aforesaid products of respondent in their stores located in the trade area reached by the NBC radio station utilized. Thereafter, NBC solicited a number of manufacturers and distributors of grocery products, including respondent, to purchase radio time over its facilities at the regular rate by offering as an extra inducement the above referred to in-store promotions in the stores of the participating grocery chains located in the trade area reached by the NBC radio station utilized.

Using these plans, respondent has entered into contracts in the following amounts with NBC which entitled it to radio time and in-store promotions in stores of the participating grocery chains:

NBC station	Location	Dates	Approximate amount paid by respondent
WRCA.....	New York City.....	May 2, 1954 to July 31, 1954..	\$19,500

Compensation for in-store promotional services furnished by respondent's grocery chain customers who participated in the plans as above described is included in the above payments made by respondent to NBC. Such compensation was not offered or otherwise made available by respondent on proportionally equal terms to all

other customers competing with the favored customer or customers in the sale and distribution of respondent's products.

PAR. 7. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of section 2 of the Clayton Act, as amended.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 19, 1956, charging respondent with purchasing radio and TV time from certain broadcasting companies for the benefit of certain of its favored chainstore customers, as compensation to such customers for in-store services furnished by them to promote the sale of respondent's products, without offering or otherwise making such radio and TV time available on proportionally equal terms to all other of respondent's customers who compete with such favored customers in the sale and distribution of respondent's products, in violation of section 2(d) of the Clayton Act (U.S.C., title 15, sec. 13), as amended by the Robinson-Patman Act.

On April 4, 1957, respondent, its counsel and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

Respondent Sunkist Growers, Inc., is identified in the agreement as a California corporation, with its office and principal place of business located at 707 West Fifth Street, Los Angeles, Calif.

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.

Respondent, in the agreement, waives any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist as contained in the agreement 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; that the complaint herein may be used in construing the terms of said order; and 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.

All parties further agree that this agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission, and that the initial decision shall not become the decision of the Commission herein, until and unless the Commission issues an order to cease and desist in the proceeding entitled "In The Matter Of Piel Bros., Inc., Docket No. 6598"; and that, in the event a Commission order to cease and desist issued in that proceeding is vacated and set aside on its merits on an appeal taken to any United States court, within ninety days after the effective date of such order, then the order to cease and desist herein shall cease to be of any effect.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that the Commission has jurisdiction over the respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent, Sunkist Growers, Inc., a corporation, its officers, agents, representatives or employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of grocery products, including fresh and frozen juices, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's said products, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

The Commission, on June 6, 1957, having issued an order extending until further order the date on which the hearing examiner's initial decision in this proceeding otherwise would have become the decision of the Commission under section 3.21 of the rules of practice; and

The purpose of said order having been to effectuate a condition in the agreement containing a consent order theretofore executed by the

respondent and counsel in support of the complaint, which condition was that the initial decision based on the agreement should not become the decision of the Commission unless and until the Commission should issue an order to cease and desist in the matter of Piel Bros., Inc., Docket No. 6598; and

The Commission, on May 7, 1958, having adopted as its own decision the hearing examiner's initial decision containing an order to cease and desist in the matter of Piel Bros., Inc., Docket No. 6598:

It is ordered, That the hearing examiner's initial decision herein, filed May 2, 1957, be, and it hereby is, adopted as the decision of the Commission in disposition of this proceeding.

It is further ordered, That the respondent, Sunkist Growers, 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 to cease and desist contained in the aforesaid initial decision.

Decision

IN THE MATTER OF
MID-TEX CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6788. Complaint, Apr. 30, 1957—Decision, May 8, 1958

Consent order requiring a corporation in Pittsburgh, Pa., one of several affiliated corporations charged in the complaint, to cease using bait advertising to obtain leads to prospective purchasers to whom they attempted to, and frequently did, sell much higher priced storm windows and screens, disparaging the advertised products to induce cancellation of purchase orders therefor and subsequent purchase of the higher priced products.

As to the remaining respondents, the matter was settled by a similar order dated Oct. 30, 1958, 55 F.T.C. —.

By *J. Earl Cox*, hearing examiner.

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

Mr. Maurice F. Baruth, of Pittsburgh, Pa., and *Mr. David Fisher*, of New York, N.Y., for respondents Famous Window Co. of Pennsylvania, Harold Brown and Jesse Kessler.

INITIAL DECISION AS TO RESPONDENTS DOLPH GREENE AND HERBERT ARMSTRONG INDIVIDUALLY AND AS TO FAMOUS WINDOW CO. OF PENNSYLVANIA, A CORPORATION, AND HAROLD BROWN AND JESSE KESSLER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

The complaint in this proceeding charges that the several respondents have violated the Federal Trade Commission Act through the use of false, misleading and deceptive advertising in connection with the sale and distribution of aluminum storm windows, screens, and doors. The respondents are charged with representing that certain of their products were available to the public and could be procured at the various low prices listed in newspaper, radio, and television advertisements, whereas, in fact, "respondents were not interested in selling and were not making a bona fide offer to sell" the advertised items, but wanted to obtain leads and information "on persons interested in purchasing" products of better quality and higher prices than those advertised.

Respondents Dolph Greene and Herbert Armstrong were not individually served with a summons and copy of the complaint, and the complaint should, therefore, be dismissed without prejudice, as to them.