IN THE MATTER OF

AMERICAN CHICLE CO.

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

Docket 6791. Complaint, May 13, 1957—Decision, May 17, 1958

Consent order requiring a distributor in Long Island City, N.Y., to cease representing falsely in advertising by television that its drug preparation "Rolaids" was endorsed generally by the medical profession and that stomach acid is capable of burning a hole in a cloth napkin.

Mr. Daniel J. Murphy and *Mr. Thomas A. Sterner* supporting the complaint.

Mr. H. Thomas Austern and *Mr. Henry P. Sailer* of *Covington & Burling*, of Washington, D.C. and *Mr. E. V. Moore* of Long Island City, N.Y., for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the American Chicle Co., a corporation, hereinafter referred to as respondent, violated the provisions of the Federal Trade Commission Act by the use of alleged false advertising in a film which was telecast over television broadcasting stations at the direction of respondent, advertising the merits of its preparation "Rolaids."

After issuance and service of the complaint the respondent filed an answer, admitting the jurisdictional allegations contained therein but denying the other allegations. Thereafter, hearings were held and the receipt of evidence and testimony in support of the complaint was completed.

Before beginning the presentation of testimony in behalf of respondent, respondent, its counsel, and counsel supporting the complaint entered into agreement for a consent order. The proposed order contains prohibitions with respect to all violations of the act specifically alleged in the complaint with the exception of the allegation contained in paragraph 6(2) thereof. As to this allegation, respondent, its counsel, and counsel supporting the complaint recommend that same be dismissed without prejudice for the reason that this allegation refers to an interpretation based upon the chemical neutralizing properties of the preparation and not to its therapeutic efficacy, and the prohibitions contained in the proposed order which

pertain to the remainder of the film complained about effectively achieve the purposes of the complaint with respect to that film.

The agreement has been approved by the Director and the Assistant Director of the Bureau of Litigation and, with the exception noted above, disposes of all issues in the proceeding. The pertinent provisions of the agreement are as follows: Respondent admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; the record herein shall consist solely of the complaint and the agreement; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondent waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondent waives any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of 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.

Upon consideration of the allegations of the complaint, the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that said order constitutes a satisfactory settlement and disposition of the matters complained about in this proceeding and the acceptance thereof will be in the public interest.

Accordingly, the hearing examiner accepts such agreement, makes the following jurisdictional findings and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent, American Chicle Co., is a corporation existing and doing business under the laws of the State of New Jersey, with its office and principal place of business located at 30–30 Thomson Avenue, Long Island City, N.Y.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondent American Chicle Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the

offering for sale, sale, or distribution of the preparation Rolaids, or any other preparation of similar composition or possessing substantially similar properties whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, by means of the United States mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication that:

(a) Stomach acid or concentrated stomach acid is capable of burning a hole in a cloth napkin;

(b) By the use of a white coat or any other object, device, or words indicative of the medical profession, that doctors or the medical profession recommend Rolaids, unless the representation is limited to numbers of doctors not greater than has been ascertained to be the fact.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That subparagraphs 6(2) and 7(2) of the complaint be, and the same hereby are, dismissed, without prejudice.

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 shall, on the 17th day of May 1958, 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.

IN THE MATTER OF

FEDERAL-MOGUL CORP.

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

Docket 5769. Complaint, May 1, 1950—Decision, May 20, 1958

Consent order requiring a Detroit manufacturer of automotive products and supplies, to cease discriminating in price in violation of section 2(a) of the Clayton Act by selling its products at higher and less favorable prices to numerous small businessmen than to various larger purchasers competing with them and with purchasers from its competitors.

Mr. Eldon P. Schrup for the Commission.

Dickinson, Wright, Davis, McKean & Cudlip, of Detroit, Mich., 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, since June 19, 1936, has violated and is now violating the provisions of subsection (a), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Federal-Mogul Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with principal office and place of business located at 11031 Shoemaker Avenue, Detroit, Mich.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of the manufacture, sale, and distribution of automotive products and supplies to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies so sold to be shipped and transported from the State or States of location of its places of business to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as