

Complaint

54 F.T.C.

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

aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms, and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same in manner and method and for purposes as aforestated. Many of said purchasers and many of the aforesaid purchasers from the respondent are competitively engaged each with the other.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, directly or indirectly discriminating in price between the aforesaid different purchasers of its said automotive products and supplies of like grade and quality sold and distributed in manner and method and for purposes as aforestated, by selling said products and supplies at higher and less favorable prices to numerous small businessmen purchasers than said products and supplies are sold to various larger purchasers some of which are competitively engaged with some of said less favored purchasers and with some of said purchasers from respondent's competitors.

PAR. 5. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said automotive products and supplies of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy, or prevent competition with said respondent, said favored purchasers, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondent constitute violations of 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.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued May 1, 1950, charges the respondent Federal-Mogul Corp., now known as Federal-Mogul-Bower Bearings, Inc., a corporation, located at 11031 Shoemaker Avenue, Detroit, Mich., with violation of the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

After the issuance of the complaint, the Federal-Mogul-Bower Bearings, Inc., formerly Federal-Mogul Corp., respondent herein, entered into an agreement containing consent order to cease and desist with counsel supporting the complaint, disposing of all the

issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

By the terms of this agreement, the parties agreed that the respondent Federal-Mogul-Bower Bearings, Inc., formerly Federal-Mogul Corp., is a corporation organized and existing under the laws of the State of Michigan and is primarily engaged in the manufacture and sale of sleeve bearings and other parts for both original installation and replacement use in automotive vehicles.

It was further agreed in said agreement that Federal-Mogul Corp., on December 31, 1953, acquired all the property and assets of the Bearing Co. of America, a Delaware corporation, located at Lancaster, Pa., and engaged in the manufacture of ball bearings; that Bower Roller Bearing Co., a Michigan corporation, located at Detroit, Mich., and engaged in the manufacture of roller bearings, was merged into Federal-Mogul Corp. on July 29, 1955, and the name of Federal-Mogul Corp. as the surviving corporation was changed to Federal-Mogul-Bower Bearings, Inc.; that National Motor Bearing Co., Inc., a California corporation, located at Redwood City, Calif., and engaged in the manufacture of oil seals, on July 27, 1956, was merged into Federal-Mogul-Bower Bearings, Inc., as the surviving corporation; and that in 1956 the net sales of Federal-Mogul-Bower Bearings, Inc., combined facilities totaled \$100,642,000.

By the terms of said agreement, Federal-Mogul-Bower Bearings, Inc., formally Federal-Mogul Corp., admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

It was specifically agreed that this agreement does not preclude a further investigation and the issuance of complaint against respondent's sales of replacement parts to original equipment manufacturers if such be indicated.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued

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Decision

pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with sections 3.21 and 3.25 of the rules of practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein and issues the following order.

ORDER

It is ordered, That the respondent Federal-Mogul-Bower Bearings, Inc., a corporation, formerly known as Federal-Mogul Corp., and said respondent's officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale to the jobbing trade for replacement purposes of automotive replacement parts, principally consisting of sleeve type bearings, roller bearings, ball bearings, oil seals, and other related items in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in the price of such products of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

It is further ordered, That the term "purchaser" as used in this order shall include any purchaser buying directly or indirectly from respondent by means of group buying or any related device, but shall not be construed in this proceeding to include original equipment manufacturers purchasing automotive parts from respondent for replacement use or sale.

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 20th 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
NEDERLANDSCHE WEVERIJ, N.V., ET AL.

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

Docket 6953. Complaint, Nov. 25, 1957—Decision, May 20, 1958

Consent order requiring a Dutch manufacturer and its American agents, with place of business in New York City, to cease violating the Wool Products Labeling Act by tagging as "100% Cashmere," fabrics which contained substantial amounts of fibers other than Cashmere; by misrepresenting such products on invoices and shipping memoranda; and by failing in other respects to comply with the labeling requirements of the act.

Mr. Thomas A. Ziebarth for the Commission.

Covington & Burling, of Washington, D.C., by *Mr. Harry L. Schneiderman* for respondent *Nederlandsche Weverij, N.V.*

Augenblick & Frost, of New York, N.Y., by, *Mr. Robert L. Augenblick* for all other respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with misbranding certain wool products 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 counsel supporting the complaint and all of the respondents, except John Filbert, which provides, among other things, that all of said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the 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, said 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 said respondents that they have violated the law as alleged in the complaint.