

Complaint

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IN THE MATTER OF
OXFORD FILING SUPPLY CO., INC.

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

Docket 7052. Complaint, Jan. 27, 1958—Decision, June 17, 1958

Consent order requiring a leading manufacturer of filing systems and filing supplies with principal place of business in Garden City, N.Y., and with nationwide distribution of its products, to cease maintaining, in areas not having so-called fair trade laws, uniform resale prices for its well-known "Pendaflex" line of products, and, in making effective such policy, requiring dealers, as a condition precedent to selling such "Pendaflex" line, to execute franchise agreements to cooperate in maintaining its retail list prices, and canceling franchises of dealers violating the agreement; and to cease discriminating in price by selling to some of its dealer customers at 40 plus 10 percent off its published list prices while selling to their competitors at the "Trade Discount" of only 40 percent off list price, and by further requiring some dealer customers to purchase \$10,000 of its products in order to qualify for the extra 10 percent discount while requiring others to purchase only \$5,000 to so qualify.

Mr. Leslie S. Miller for the Commission.

Chamberlain, Kafer, Wilds & Jube, by *Mr. John J. Jansen*, of New York, N.Y., 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 section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and the provisions of section 2(a) of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

CHARGES UNDER SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Count I

PARAGRAPH 1. Respondent Oxford Filing Supply Co., 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 place of business located on Clinton Road, Garden City, N.Y. It has one subsidiary, Imperial Methods Co., Chicago, Ill. It also has branch

plants and warehouses in St. Louis, Mo., and Los Angeles, Calif., and an additional warehouse in Chicago, Ill.

PAR. 2. Respondent Oxford Filing Supply Co., Inc., hereinafter sometimes referred to as Oxford or as respondent, is engaged in the manufacture, sale and distribution of filing systems and filing supplies which are divided into two classifications of products:

(1) The Oxford "General Line" which consists of about 1,500 items of cards, forms folders, guides, index cards, and related products and supplies for use in offices generally for keeping records and files.

(2) The "Pendaflex" line of products which consists of about 100 separate items, the basic one being the Pendaflex hanging folder. All other Pendaflex products are related to and used in connection with this hanging folder.

Oxford was the first company in the United States to design and sell commercially a hanging folder. The Pendaflex hanging folder is, and for some time past has been, the dominant product of its kind, and has been the leading seller in the hanging folder market. By reason of the general use, popularity and customer acceptance of and demand for the Pendaflex hanging folders, the name "Pendaflex" has become a generic term for hanging folders. The handling, sale and distribution of the Pendaflex line of products has therefore become a valuable business and trade asset for the dealers and distributors throughout the United States that stock and sell these items, particularly the Pendaflex hanging folder.

For the fiscal year ending March 31, 1957, respondent's total sales amounted to \$7,849,209, of which \$2,906,900 were sales of Pendaflex products, between 60 and 80 percent of which were Pendaflex hanging folders.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent sells its products through approximately 30 wholesalers and approximately 5,400 dealers, about 3,800 of which have been franchised as Pendaflex dealers. Only dealers which have been approved and franchised by respondent Oxford through the execution of a written "Pendaflex Price Maintenance Agreement" are permitted to sell the Pendaflex line of products. Respondent has virtually nationwide distribution and sale of its products, but does not sell direct to consumers. Respondent also has approximately 20 sales representatives who call upon individual Oxford customers, taking merchandise orders, adjusting difficulties, and generally keeping in touch with market conditions concerning Oxford's products and competing products in their respective territories. Substantial responsibility rests upon respondent's salesmen with respect to the franchising

and disfranchising of respondent's wholesalers and dealers of Penda-flex products.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for a number of years past has been engaged in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, having sold and now selling its several products from its plants located in the States of New York, Missouri, and California, and transferred or caused the same to be transferred from its plants or other places of business to wholesalers or dealers of such products located in other States of the United States, or in other places under the jurisdiction of the United States.

PAR. 5. In the course and conduct of its business as aforesaid, respondent Oxford is now and for a number of years past has been in substantial competition with others engaged in the manufacture, sale and distribution of products similar in purpose and use, in commerce, between and among the various States of the United States, or other places under the jurisdiction of the United States.

PAR. 6. In the course and conduct of its business as aforesaid, respondent Oxford has sold and now sells its products to wholesaler purchasers who are in competition with each other, and also to retailer purchasers who are in competition with each other in the resale of respondent's Penda-flex products.

PAR. 7. Respondent Oxford, in the course and conduct of its business as aforesaid, in order to fix, stabilize, and make uniform the resale prices of its Penda-flex products, adopted, established, and has maintained a system or policy of merchandising whereby it fixes specified, standard, and uniform resale prices in its designated selling zones at which said Penda-flex products should be resold by its wholesalers and retail dealers, and solicited and secured their active support and agreement in the maintenance of said resale prices. In order to carry out and make effective said system or policy, said respondent has entered into agreements and understandings with its wholesalers and retail dealers purporting to bind them to the maintenance of said retail prices, and solicited and obtained their cooperation in the maintenance of such prices. Pursuant to such agreements and understandings, this respondent has undertaken to prevent and has prevented wholesalers from selling Penda-flex products at prices less than respondent's established wholesale prices, and retail dealers from selling said products at prices less than said minimum resale prices fixed by respondent as aforesaid.

In further carrying out and making effective said system or policy, respondent instituted and does presently carry out the following acts and practices:

(1) Requires, as a condition precedent to selling any dealer Penda-flex products, the execution of a franchise agreement whereby the dealer agrees with respondent that it will not offer for sale or sell any Penda-flex products at other than the retail list prices as provided by respondent Oxford.

(2) Requires of the franchised Penda-flex dealer that it will notify all of said dealer's salesmen that Penda-flex list prices must not be cut.

(3) Requires the franchised Penda-flex dealer to agree not to defend an infraction of the "Penda-flex Price Maintenance Agreement" on the grounds of error.

(4) Requires the franchised Penda-flex dealer to forego any profit whatsoever on any transaction involving an infraction of the "Penda-flex Price Maintenance Agreement." Pursuant thereto, the dealer is required to pay respondent the full retail price for such Penda-flex merchandise as may be sold by the dealer at less than the minimum resale price fixed by respondent.

(5) Requires its wholesalers of Penda-flex products to sell said products to dealers at prices and according to discounts established by respondent Oxford.

(6) Requires Oxford salesmen to check and constantly be on the alert for any infractions of the "Penda-flex Price Maintenance Agreement" and to enforce said agreement.

(7) Reserves the right to cancel and in some instances has cancelled, the franchise of a dealer who has violated any of the terms of the "Penda-flex Price Maintenance Agreement."

PAR. 8. In the District of Columbia and in some of the several States of the United States valid statutes authorizing agreements prescribing minimum or stipulated resale prices have not been enacted, and interstate transactions involving such areas do not come within the exemptions granted by the Federal Trade Commission Act, as amended by the McGuire Act. Some of the agreements hereinabove alleged were between respondent and purchasers located in such areas.

PAR. 9. In furtherance of the system and policy of respondent Oxford to maintain the resale prices fixed and established by it with respect to Penda-flex products, respondent requires that none of its wholesalers or dealers sell such products to any dealer that is not franchised pursuant to its "Penda-flex Price Maintenance Agreement," under penalty of cancellation of the franchise entered by respondent Oxford with such wholesaler or dealer.

In pursuance of the foregoing policy, said wholesalers and dealers have entered verbal agreements or understandings with respondent Oxford that said policy will be observed and adhered to. Cancellation of the wholesaler's or dealer's franchise has in fact occurred in

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some instances wherein infraction of this understanding or agreement has taken place.

Pendaflex products are movables, the title to which passes from respondent Oxford to its franchised wholesalers or retail dealers, and the aforesaid restraints upon alienation of the said Pendaflex products, in the District of Columbia and in the several States of the United States wherein valid statutes authorizing agreements prescribing minimum or stipulated resale prices have not been enacted, are unfair methods of competition in violation of section 5 of the Federal Trade Commission Act.

PAR. 10. The effects of the aforesaid unlawful agreements and understandings, and of the acts and practices done by respondent pursuant thereto, have been and are the tendency to suppress and hinder, and the suppression and hindrance of, competition between wholesalers and between retail dealers in the sale of Pendaflex products; the causing of such purchasers to sell such products at prices fixed and established by respondent; the preventing of said purchasers, and each of them, from selling said products at such lower prices as they might deem adequate and warranted by their respective costs, their respective methods of doing business, and by trade or market conditions generally; and the depriving of purchasers of the advantages in price which otherwise they would or might obtain in and through a natural and unobstructed flow of commerce in said products, all of which constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and in violation thereof.

THE CHARGES UNDER SECTION 2(a) OF THE CLAYTON ACT, AS
AMENDED

Count II

Paragraphs 1 to 3, inclusive, appearing in count I of this complaint are hereby incorporated in this count II by the Commission to the same extent as if each of them were set forth in full and repeated in this count II.

PAR. 11. In the course and conduct of its business as aforesaid, respondent is now engaged, and for a number of years past has been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having sold its several products from its plants located in the States of New York, Missouri, and California, and transferred or caused the same to be transferred from its plants or other places of business to purchasers of such products located in other States of

the United States, or in other places under the jurisdiction of the United States.

PAR. 12. In the course and conduct of its business as aforesaid, respondent Oxford has sold and now sells its general line products in commerce to purchasers who have been and are now in substantial competition with each other in the resale, some in commerce, of such products.

PAR. 13. In the course and conduct of its business in commerce as aforesaid, respondent Oxford has been and is now discriminating in price between different purchasers of its general line of products by selling such products to some purchasers at higher prices than it sells such products of like grade and quality to other purchasers, and some of the favored purchasers are engaged in active and open competition with the less favored purchasers in the resale of such products within the United States.

Such discriminations in price result from one or more or a combination of the following enumerated practices:

(1) Respondent sells its general line products to some of its dealer customers at 40 and 10 percent off the published list prices, whereas it sells to other of its competing dealer customers at the "Trade Discount" of only 40 percent off list price. The 40 and 10 percent discount is designated a "Special Sales Arrangement" with respect to the favored dealers. The extra 10 percent is applicable only on general line products. To qualify therefor, a dealer must have purchased (in other than the metropolitan New York City area) \$10,000 or more of Oxford's general line, Pendaflex products, or both, the preceding fiscal year. Thereafter during the period the extra 10 percent is applicable, the favored dealer receives such extra discount on all purchases of general line products, regardless of the quantity purchased.

(2) The same arrangement prevails in the metropolitan New York City area except that the dealer's total purchases from respondent Oxford during the preceding fiscal year in order to qualify for the extra 10 percent need be only \$5,000.

(3) In requiring the dealers in the metropolitan New York City area to purchase a total of \$5,000 of Oxford's general line, Pendaflex products, or both, during the preceding fiscal year as a prerequisite for receiving the "Special Sales Arrangement" extra 10 percent discount thereafter, competing Oxford dealers in the geographical areas adjacent to the metropolitan New York City area are placed at a competitive disadvantage by being required to have purchased

\$10,000 of such products during the same period in order to qualify for such extra 10 percent discount.

(4) In order for unfavored dealers receiving only the Trade Discount of 40 percent to qualify for any further discount, they are required to purchase Oxford products in quantities specified in respondent's catalog and price book covering general line products. The quantity discounts provided therein vary from 5 percent to 7½ percent to 10 percent depending upon the type and quantity of general line products purchased in a single order for a single shipment.

The price concession through the granting of an extra 10 percent discount to respondent's favored dealer customers has been extremely harmful and injurious to respondent's unfavored dealer customers who are in competition with such favored customers. Also, the requirement for some dealer customers having to purchase \$10,000 of respondent's general line, Pendaflex products, or both, in order to qualify for the extra 10 percent discount places them at a competitive disadvantage in relationship to other dealers being required to purchase only \$5,000 of such products in order to so qualify.

PAR. 14. The effects of respondent's said discriminations in price has been and may be substantially to lessen competition in the line of commerce in which the purchasers receiving the benefit of such discriminatory price are engaged. Said practices of respondent also have a dangerous tendency unduly to hinder competition, or to injure, destroy or prevent competition between those purchasers receiving the benefit of such discriminatory prices and those to whom they are denied, and tend to create a monopoly in those purchasers who receive the benefit of said discriminatory prices.

PAR. 15. The discriminations in price, as hereinabove alleged and described, are in violation of subsection (a) of section 2 of the aforesaid Clayton Act, as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and the provisions of section 2(a) of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, the Federal Trade Commission on January 27, 1958, issued and subsequently served its complaint in this proceeding against respondent Oxford Filing Supply Co., Inc., 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 on Clinton Road, Garden City, N. Y.

On April 23, 1958, there was submitted to the undersigned hearing

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examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondent waives any further procedural steps before the hearing examiner and the Commission; waives the making of findings of fact and conclusions of law; and waives 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. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; 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; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it 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; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Oxford Filing Supply Co., Inc., is a corporation existing and doing business under the laws of the State of New York, with its office and principal place of business located on Clinton Road, Garden 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 respondent Oxford Filing Supply Co., Inc., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is

defined in the Federal Trade Commission Act, of respondent's Penda-flex or other products, do forthwith cease and desist from:

1. Entering into, continuing, enforcing, or maintaining any agreement or understanding, express or implied, with any wholesaler or retail dealer concerning the price at which such products are to be resold by such wholesaler or retail dealer or any of their customers.

2. Entering into, continuing, enforcing, or maintaining any agreement or understanding, express or implied, with any wholesaler or retail dealer which prohibits said wholesaler or retail dealer from selling any said product to purchasers who have not agreed to maintain or who do not maintain resale prices established or suggested by respondent on said product:

Provided, however, That nothing herein shall be interpreted as prohibiting respondent from establishing and maintaining resale prices on its products in any manner exempted from the prohibitions of the Federal Trade Commission Act by the McGuire Act.

It is further ordered, That respondent Oxford Filing Supply Co., Inc., a corporation, 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 respondent's "general line" of filing systems and supplies or any other products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

By selling such products to any purchaser thereof at prices lower than the prices charged other purchasers who in fact compete with the favored purchasers in the sale or distribution of such products.

The term "price" as used in this order takes into account discounts, rebates, allowances and other terms or conditions of 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 17th day of June 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.

Decision

IN THE MATTER OF
MUNTZ TV, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6928. Complaint, Nov. 6, 1957—Decision, June 18, 1958

Consent order requiring a Chicago manufacturer to cease exaggerating, in newspaper advertising and by markings on sets and otherwise, the size of the picture tubes of its television sets, and representing falsely that its TV sets were sold directly to the consumer from "factory outlets."

The individual respondent accepted the same consent settlement on July 15, 1958, 55 F.T.C.—.

Before *John B. Poindexter*, Hearing Examiner.

Mr. Michael J. Vitale and *Mr. Thomas A. Ziebarth* supporting the complaint.

Mr. Arthur J. Bernstein, of Chicago, Ill., for Muntz TV, Inc.

INITIAL DECISION AS TO RESPONDENTS MUNTZ TV, INC., A CORPORATION, AND EARL W. MUNTZ AS AN OFFICER THEREOF

On November 6, 1957, the Federal Trade Commission issued a complaint charging Muntz TV, Inc., a corporation, and Earl W. Muntz, individually and as an officer of said corporation with having violated the provisions of the Federal Trade Commission Act by the dissemination in commerce of advertisements and statements exaggerating the size of the picture tubes in the television receivers manufactured by said respondent corporation and misrepresenting that the receivers were sold directly to the consumer from the factory. After issuance and service of the complaint, the respondent corporation Muntz TV, Inc., filed an answer in which it denied, for the most part, the allegations set forth in the complaint and stated, among other things, that Earl W. Muntz, named in the complaint as an officer of said corporation, was not, in fact, an officer of said corporation, but that one Wallace J. Keil was the president thereof.

Thereafter, the corporate respondent Muntz TV, Inc., its counsel and counsel supporting the complaint entered into an agreement for consent order. In said agreement it is recommended that the complaint be dismissed as to Earl W. Muntz in his capacity as an officer of the corporate respondent Muntz TV, Inc., for the reason that Mr. Muntz relinquished his office as president of Muntz TV, Inc., effective January 30, 1957, and is no longer an officer of said corporation.

The order disposes of the matters complained about with respect to Muntz TV, Inc., a corporation. The agreement has been approved