

Complaint

IN THE MATTER OF
EMPIRE PLASTIC CORPORATIONCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT*Docket 7069. Complaint, Feb. 20, 1958—Decision, July 7, 1958*

Consent order requiring a manufacturer of plastic toys with factory at Pelham Manor, N.Y., and sales office in New York City, to cease discriminating in price in violation of Section 2(a) of the Clayton Act by granting as a discount or rebate an amount equivalent to five per cent of list price to certain toy jobbers and wholesalers while not making such allowance available to their competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Empire Plastic Corporation, more particularly designated and described hereinafter, has violated the provisions of Section 2(a) of the Clayton Act (U.S.C. Title 15, Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Empire Plastic Corporation is a corporation organized and existing under the laws of the state of New York with its principal office and place of business located at 14 Pelham Parkway, Pelham Manor, N.Y.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of plastic toys throughout the United States. It operates a factory at the foregoing address and also maintains a sales office in New York City. Its annual volume of sales approximates \$2,000,000 and its customers consist of jobbers and chain stores. Respondent is represented in various sections of the country by commission merchants who are paid on a commission basis but who also represent other toy manufacturers

PAR. 3. Respondent, in the course and conduct of its said business, is engaged in commerce, as "commerce" is defined in the Clayton Act, in that it sells and distributes toys to purchasers thereof located in states other than the state of origin of shipment and causes such products to be shipped and transported from its place of business to purchasers located in other states and in the District of Columbia, and there is now and has been a constant

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course and flow of trade and commerce in such products between respondent and said purchasers and respondent is therefore subject to the jurisdiction of the Federal Trade Commission.

PAR. 4. In the course and conduct of its said business, respondent has been and is now in competition with other corporations, partnerships and individuals in the manufacture, sale and distribution in commerce of toys except as such competition has been substantially lessened by the pricing practices of respondent hereinafter alleged.

Some of the respondent's purchasers are in competition with each other and with purchasers of competitors of respondent in the resale of toys.

PAR. 5. Respondent, either directly or indirectly, has been and is now discriminating in price between different purchasers of its toys by selling such products to some purchasers at substantially higher prices than it sells such products of like grade and quality to other purchasers, some of whom are in competition with the less favored purchasers in the resale of such products.

For example, since 1954 said respondent has granted, either by way of a discount from list price or as a rebate at the end of a period of time, an amount equivalent to 5% of list price in the sale of toys of like grade and quality to some purchasers but not to others, which results in higher prices being paid by those purchasers who do not receive the benefit of such discount or rebate than are paid by those purchasers who do receive the benefit of such discount or rebate. Some of the favored purchasers compete with the unfavored purchasers in the resale of such products.

The purchasers of respondent's toys who have received preferential prices by way of said discount or rebate are members of a corporation known as March of Toys, Inc., whose membership is composed of toy jobbers and wholesalers. It is to the members of this corporation, March of Toys, Inc., that said respondent has granted a preferential price by means of the above described discount or rebate.

PAR. 6. The discriminations in price on the part of respondent being substantial, it is alleged that the effect thereof may be substantially to lessen competition and to tend to create a monopoly in the respective lines of commerce in which respondent and the purchasers receiving the preferential prices are engaged, and to tend to prevent, injure and destroy competition between

respondent and its competitors and between and among purchasers of such toys from respondent.

PAR. 7. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lewis F. Depro and Mr. Frederick McManus for the Commission.

Krisel, Lessall & Dowling, of New York, N.Y., by *Mr. George Lessall*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued February 10, 1958, charges respondent Empire Plastic Corporation, a corporation, located at 14 Pelham Parkway, Pelham Manor, N.Y., with violation of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in the sale and distribution of toys.

After the issuance of the complaint, said respondent entered into an agreement containing consent order of cease and desist with counsel in support of the complaint, disposing of all the issues as to all parties in this proceeding, which agreement was duly approved by the director and assistant director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof if for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the said respondent 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 the allegations.

By said agreement, the respondent 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 it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent 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

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the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued 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 provide 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 Empire Plastic Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of toys in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling such toys of like grade and quality to any purchaser at prices higher than those granted any other purchaser:

1. Where such other purchaser competes in fact with the unfavored purchaser in the resale and distribution of such products, or
2. Where respondent, in the sale of such products, is in competition with any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision filed on May 13, 1958, and the Commission having determined that said initial decision is adequate and appropriate in all respects to dispose of this proceeding:

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

It is further ordered, That the respondent Empire Plastic Corporation, a corporation, shall within sixty (60) days after

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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 said initial decision.

IN THE MATTER OF
FRANK GROSS TRADING AS FRANK GROSS FURS

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

Docket 6921. Complaint, Oct. 24, 1957—Decision, July 12, 1958

Consent order requiring a furrier in Harrisburg, Pa., to cease violating the Fur Products Labeling Act by affixing to fur products labels containing fictitious prices and thereby misrepresenting the regular retail selling prices; by failing to conform to the invoicing requirements of the Act; by newspaper advertisements which represented prices as reduced from regular prices which were in fact fictitious, and used comparative prices and percentage savings claims not based on the regular retail prices; and by failing to maintain adequate records as a basis for such pricing claims.

Mr. Charles W. O'Connell for the Commission

Mr. Lewis F. Adler, of Harrisburg, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent, Frank Gross, an individual trading as Frank Gross Furs, with having violated the provisions of the Federal Trade Commission Act and of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder, in certain particulars. Respondents were duly served with process.

On May 13, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between the respondent and attorneys for both parties, under date of May 8, 1958, subject to the approval of the Bureau of Litigation of the Commission. Such agreement had been thereafter duly approved by that Bureau.

On due consideration of the said "Agreement Containing Consent Order to Cease and Desist," the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings and that by said agreement the parties have specifically agreed that: