

Complaint

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IN THE MATTER OF
JUDSON DUNAWAY CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECS. 2(d) AND 3 OF THE CLAYTON ACT

Docket 6925. Complaint, Oct. 31, 1957—Decision, July 24, 1958

Consent order requiring a manufacturer of a line of household cleaning, deodorizing, mothproofing, and related products, with plants in Dover, N.H., and Kentland, Ind., to cease: (1) discriminating in price in violation of Section 2(d) of the Clayton Act by such practices as paying substantial sums of money to Grand Union chain of supermarkets and retail food stores in the form of advertising of its products on an illuminated "spectacular" at 46th and Broadway, New York City, and by in-store promotional displays, while not giving Grand Union's competitors similar treatment; and (2) allowing a discount from, or rebate upon, the price of its products to Grand Union on condition that the latter not deal in products of its competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that Judson Dunaway Corporation, a corporation, has violated the provisions of Section 2, subsection (d), and Section 3 of the Clayton Act, as amended (15 U.S.C. Sec. 13 and 14) hereby issues its complaint, stating its charges as follows:

Count I

PARAGRAPH 1. Judson Dunaway Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Hampshire. It has its principal office and a manufacturing plant at Dover, N.H., and an additional manufacturing plant at Kentland, Ind. (It may be referred to hereinafter as Judson Dunaway or respondent.)

PAR. 2. Judson Dunaway is now, and for many years has been, engaged in the manufacture of a line of household cleaning, deodorizing, moth-proofing and related products, including Delete, a rust and stain remover; Vanish, a cleaning and deodorizing agent for bathroom fixtures; Elf, a drain clearing agent; Expello, moth crystals and insect bombs; Bug-a-Boo, moth crystals and aerosol insecticides.

Judson Dunaway sells its products to customers with places of business located throughout the several States of the United States and in the District of Columbia for resale within the

United States to consumers. Among these customers are retail grocery chains, supermarkets and independent retail grocery stores. Its sales are substantial, aggregating more than \$3,500,000 in 1955.

PAR. 3. Judson Dunaway is now, and for many years has been, engaged in commerce as that term is defined in the Clayton Act. It transports, or causes to be transported, its products from the States of manufacture to customers located in other States of the United States, as well as in the States of manufacture. There is, and has been, a constant stream of trade and commerce in these products among the various states and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce during the past three years, Judson Dunaway has contracted to pay, and has paid, money, goods or other things of value to or for the benefit of certain of its customers. It has made these payments as compensation or in consideration for services or facilities furnished by or through these customers in connection with the sale or offering for sale of products manufactured, sold or offered for sale by Judson Dunaway. But such payments or consideration have not been available on proportionally equal terms to all other customers competing in the sale and distribution of such products.

PAR. 5. Among and typical of the discriminations alleged in paragraph 4 are transactions between Judson Dunaway and The Grand Union Corporation. Grand Union operates a chain of supermarkets and retail food stores in New York, New Jersey, Pennsylvania, Vermont and other States. Judson Dunaway has paid to or for the benefit of Grand Union, directly or indirectly, substantial sums of money for services and facilities furnished it by or through Grand Union in the form of advertising of Judson Dunaway products on an illuminated "spectacular" animated sign leased and controlled by Grand Union at 46th Street and Broadway, New York City, and in the form of in-store promotional displays. These payments have been made and the services and facilities furnished in connection with the handling, sale and offering for sale of Judson Dunaway products.

These payments were not available, however, on proportionally equal terms to all other customers competing in the distribution and sale of Judson Dunaway products.

PAR. 6. The acts and practices of Judson Dunaway, as alleged in Count I of this complaint, are in violation of Subsection (d)

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of Section 2 of the Clayton Act, as amended (15 U.S.C. Section 13).

Count II

PARAGRAPHS 1 through 3. For its charges under paragraphs 1 through 3 of this Count II, the Commission relies upon the matters and things set out in paragraphs 1 through 3 of Count I to the same extent and as though they were set out in full herein, and paragraphs 1 through 3 of Count I are, therefore, incorporated herein by reference and made a part of the allegations of this Count.

PAR. 4. In the course and conduct of its business in commerce, as above described, Judson Dunaway is now, and for many years has been, in substantial competition with other corporations, persons, firms and partnerships in the sale and distribution in commerce of household cleaning and deodorizing preparations, insecticides and related products.

PAR. 5. In the course and conduct of its business in commerce, as above described, Judson Dunaway has made sales and contracts for the sale of its products and has fixed a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the purchaser shall not deal in similar products of a competitor or competitors.

PAR. 6. Among such sales and contracts of sale are transactions entered into between Judson Dunaway and a large chain store organization, The Grand Union Company, whereby Grand Union agreed to handle and sell Judson Dunaway products exclusively in its retail stores and refrain from handling or selling products of one or more competitors of Judson Dunaway.

PAR. 7. Judson Dunaway's sales of its products pursuant to the conditions, agreements and understandings described in paragraphs 5 and 6 above have been and are substantial. Competitors of Judson Dunaway have been and are now unable to make sales of their products to customers of Judson Dunaway which they could have made but for the conditions, agreements and understandings described above in Paragraphs 5 and 6.

PAR. 8. The effect of such sales and contracts of sale on such conditions, agreements or understandings may be substantially to lessen competition or to tend to create a monopoly in the line of commerce in which Judson Dunaway has been and is engaged.

PAR. 9. The acts and practices of Judson Dunaway, as alleged

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in Count II of this complaint, are in violation of Section 3 of the Clayton Act (15 U.S.C. Sec. 14).

Mr. Donald R. Moore and *Mr. Charles J. Steele* supporting the complaint.

Mr. Charles F. Hartnett, of Dover, N.H., for respondent.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on October 31, 1957, charging it with having violated Section 2(d), as amended, and Section 3 of the Clayton Act. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement, dated May 14, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that 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.

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This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Judson Dunaway Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at Third and Grove Streets, in the city of Dover, State of New Hampshire.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the provisions of the Clayton Act.

ORDER

It is ordered, That respondent Judson Dunaway Corporation, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of insecticides, household cleaning, deodorizing and mothproofing preparations, and other products, do forthwith cease and desist from:

Paying or contracting to pay to or for the benefit of any customer anything of value as compensation or in consideration for any advertising or for any promotional displays furnished by or through such customer in connection with the handling, processing, sale or offering for sale of respondent's products unless such payment or consideration is available on proportionally equal terms to all other customers competing in the resale of such products.

It is further ordered, That respondent Judson Dunaway Corporation, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of insecticides, house-

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hold cleaning, deodorizing and mothproofing preparations, and other products, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such product on the condition, agreement or understanding that the purchaser thereof shall not use or deal in or sell products supplied by any competitor or competitors of respondent;

2. Enforcing or continuing in operation or effect any condition, agreement or understanding in, or in connection with, any existing contract of sale, which condition, agreement or understanding is to the effect that the purchaser of said products shall not use or deal in or sell products supplied by any competitor or competitors of respondent.

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 24th day of July 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.

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IN THE MATTER OF
CHAMPION PRODUCTS, INC., ET AL.

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

Docket 6944. Complaint, Nov. 18, 1957—Decision, July 24, 1958

Consent order requiring the manufacturer in Stephenville, Tex., and distributor in Oklahoma City, Okla., of gasoline and oil additives sold under the brand names of "Q-X" and "Q-X with Moly," respectively, to cease representing falsely in advertising in newspapers, periodicals, and sales literature, and by statements of sales representatives, that said products were extensively used by certain large corporations and firms and were approved and recommended by them and by the United States Government; that purchasers' money would be returned if they did not accomplish the guaranteed results; and that they were regularly advertised in "Life" magazine.

INITIAL DECISION AS TO RESPONDENTS CHAMPION PRODUCTS, INC.,
A CORPORATION, JOHN T. HEATON, LUCILLE HEATON, AND
WILLIAM J. OXFORD, INDIVIDUALLY AND AS OFFICERS OF
SAID CORPORATION, AND EARLE A. GOODENOW, JR.,
INDIVIDUALLY AND TRADING AND DOING BUSINESS
AS THE GOODENOW COMPANY

Before *Mr. John B. Poindexter*, hearing examiner.

Mr. Edward F. Downs and *Mr. Garland S. Ferguson*, counsel
supporting the complaint.

Mr. Ennis Favors of Stephenville, Tex., for respondents.

On November 18, 1957, the Federal Trade Commission issued a complaint charging that the corporations and persons named in the caption hereof, hereinafter called respondents, violated the provisions of the Federal Trade Commission Act by the use of alleged false advertising in the manufacture, sale and distribution of their gasoline and oil additives.

After issuance and service of the complaint, the respondents answered, denying generally the allegations contained in the complaint and stating, among other things, that Mr. Goodenow, Sr. is deceased; Champion Oil Company, Inc., is no longer in business, liquidation of the corporation was completed in September 1957, and the charter of said corporation has expired.

Thereafter, respondent Champion Products, Inc., a corporation, its officers, John T. Heaton, Lucille Heaton and William J. Oxford