

Decision

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

Docket 7005. Complaint, Dec. 23, 1957—Decision, Oct. 3, 1958

Consent order requiring a New York City book publisher to cease, in soliciting manuscripts from authors, making false claims about its cooperative publishing plans, concerning the author's investment, royalties, its size and success, superiority over its competitors, etc.

Mr. Charles C. Cox for the Commission.

Mr. Jacob Zane Hoffman, of New York, N.Y., for respondents.

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 respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On May 28, 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 respondents and the attorneys for both parties, under date of May 26, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, 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 to the following matters:

1. Respondent Vantage Press, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Individual respondent Alan F. Pater is president and individual respondent Arthur Kleinwald is secretary-treasurer of said corporate respondent. Individual respondents Alan F. Pater and Arthur Kleinwald formulate, direct, and control the acts, practices, and policies of said corporate respondent. All of said respondents have offices and a principal place of business at 120 West 31st Street, New York, N.Y.

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2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 23, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

4. This agreement disposes of all of this proceeding as to all parties.

5. Counsel in support of the complaint states that the charge in Section 1 of paragraph 6 of the complaint that respondents represent or have represented that the entire first edition of an author's book will sell out and the charge in subsection (j) of Section 3 of paragraph 7 of the complaint that respondents did not distribute 500,000 copies of promotional material over a twelve-month period, are omitted for the reason that the same are denied by respondents and counsel in support of the complaint does not have available witnesses to prove the contrary and recommends that these charges be dismissed.

6. Respondents waive:

a. Any further procedural steps before the hearing examiner and the Commission;

b. The making of findings of fact or conclusions of law; and

c. All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

7. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

8. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

9. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

10. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified, or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

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Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," said agreement is hereby approved and accepted and is ordered filed if and when said agreement shall have become a part of the Commission's decision. The hearing examiner finds from the complaint and the said agreement that the Commission has jurisdiction of the subject matter of this proceeding and of the persons of each of the respondents herein; that the complaint states legal causes for complaint under the Federal Trade Commission Act against each of the respondents, both generally and in each of the particulars alleged therein except as to the hereinabove stated charge in Section 1 of paragraph 6 of the complaint and the hereinabove stated charge in subsection (j) of Section 3 of paragraph 7 of the complaint, as to which it has been agreed that evidence is not available to prove the same and that such charges should be dismissed; that this proceeding is in the interest of the public; that the recommendation in paragraph 5 of the agreement that the complaint be dismissed in the particulars hereinabove stated is approved and adopted by the hearing examiner, whereby the following order as proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order, therefore, should be and hereby is entered as follows:

ORDER

It is ordered, That respondent Vantage Press, Inc., a corporation, and its officers, and respondents Alan F. Pater and Arthur Kleinwald, individually and as officers of said corporate respondent, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the solicitation of contracts for the printing, promotion, sale and distribution of books and the printing, promotion, sale and distribution of books in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or indirectly that:

(a) They operate a cooperative publishing plan in which they share with the author in the expense of printing, binding, promotion and sale of the book or that they are partners with the author;

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(b) The author's investment is limited to the first edition unless such is the fact;

(c) Any payment made to an author based on sales of the author's book is a royalty unless and until the author has recouped the sum of money paid under the contract therefor;

(d) An author receives a return of four or any other number of times as much under their contract as would be paid the author under a "standard" contract;

(e) An author will recoup his or her entire investment when publishing through them, or will recoup the entire investment when the first edition sells out unless such is the fact;

(f) A second or any other number edition of an author's book will be required, or that their promotion will create such a demand for an author's book that a second and subsequent edition will be required to fill such demand;

(g) An author will receive $33\frac{1}{3}\%$ or any other percentage on all sales of books of subsequent editions unless such is the fact or that the sum paid an author by them is more than the author would receive from any competitor.

2. Representing directly or indirectly that:

(a) They only accept manuscripts with merit and sales appeal possibilities;

(b) All manuscripts accepted by them have been determined to have merit and sales appeal.

3. Representing directly or indirectly that:

(a) They have their own sales force of book store salesmen in key cities of the United States;

(b) They conduct an aggressive sales promotion with representatives,

(1) Calling on leading book stores and wholesalers in key cities in the United States,

(2) Displaying their books at conventions,

(3) Supplying posters and circulars to dealers,

(4) Arranging for autograph parties for their authors, unless such is the fact;

(c) They have sales representatives who canvass bookstores, libraries, organizations and the reading public;

(d) All avenues of publicity are used in conducting the promotion and sales campaigns for their author's books, or misrepresenting the avenues used or the extent of the promotion and sales campaigns actually used;

(e) They have their own sales force which makes periodic

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calls on various book outlets throughout the year unless such is the fact;

(f) The sales of \$500,000 worth of books, or any other amount, in 1955 or any given year, is proof that they have an aggressive sales staff, or that the sale of \$500,000 worth or any other amount of books thereby earned and resulted in the payment of high royalties to their authors;

(g) They make all possible efforts to sell their books in the United States or in foreign countries;

(h) Their publishing plan has major or any other advantages over competitors in:

(1) Assuring the author a specific time of publication or that they publish an author's book in a shorter period of time than their competitors;

(2) Assure an author a beautiful book comparable to the finest published;

(3) Guaranteeing an author 40% or any other percentage royalty on every book or that an author will receive 4 to 8 or any other number of times as much money by publishing through them than through their competitors;

(4) That they bring an author's book to the attention of critics, the trade, the public, movie studios or reprint houses to any greater degree or beneficial manner than do their competitors;

(5) Guaranteeing an author national advertising for his or her book unless such is the fact;

(6) That the cost of their services is less than that of competitors, or is the same as that of competitors for less service.

(i) Their direct mail and publication advertising results in the successful promotion of an author's book;

(j) They have salesmen whose visits or calls on dealers and wholesalers are coordinated with the distribution of direct mail promotional advertising;

(k) They will advertise and promote an author's book without the payment of any additional sum over that listed in the contract or that the promotion and advertising of an author's book is at their expense rather than that of the author;

(l) They give advanced publicity releases to each of their authors when a manuscript is accepted for publication, or that those released are sent to all newspapers, magazines, radio and television stations likely to be interested in the specified book or books in excess of the releases actually sent;

(m) Their efforts to arrange for a personal appearance of

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their authors on radio and TV programs will result in the personal appearance of each author on radio and TV programs or will result in the sale of the promoted book;

(n) They send any number of copies of their title books to book review media throughout the United States in excess of the number of those actually so sent;

(o) Their sending out any particular number of "review" copies to various review media and critics insures reviews of their authors' books;

(p) The United Press Review features their book reviews in 1,500 papers or any number of papers in excess of those in which the same appeared;

(q) That any pictorial presentation of a window display, including posters, is typical of the promotion provided for their authors' books unless such is the fact;

(r) They have their own art department, or that their business is larger or has more employees and departments than actually exists.

4. Representing directly or indirectly that:

(a) They have a separate department engaged exclusively in the sale of subsidiary rights, or that they have a department in constant touch with reprint houses, motion picture studios, newspaper syndicates, television and radio stations, or other organizations to or through which subsidiaries rights can be sold;

(b) They have sold motion picture rights to any of their authors' books to any motion picture studio unless such is the fact;

(c) Their Hollywood, Calif., branch office was established for the purpose of working closely with influential agents and executives who choose the books for motion pictures;

(d) They are the only subsidy publisher with a California branch office;

(e) Outlets for subsidiary rights require that a manuscript be accepted for publication or already published as a prerequisite for considering same;

(f) They have a long list of sales successes to their credit or that any number of books published through their subsidy plan were successful unless sufficient number of copies were sold to repay the author the subsidy paid by the author.

5. Representing directly or indirectly that they have an office or offices located in any place or places other than where they actually have such an office or offices.

It is further ordered, That the charge in Section 1 of paragraph 6 of the Complaint that respondents represent or have represented that the entire first edition of an author's book will sell out, and the charge in subsection (j) of Section 3 of paragraph 7 of the Complaint that respondents did not distribute 500,000 copies of promotional material over a twelve-month period, are hereby dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The hearing examiner, on June 20, 1958, having filed his initial decision accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondents and counsel in support of the complaint, and having included therein, an order in conformity with said agreement; and

The respondents, by letter from their counsel dated July 29, 1958, having requested that the order contained in said initial decision be modified by deleting therefrom subparagraph "c" of paragraph "1" thereof, after which the Commission, by order issued August 1, 1958, extended until further order the date on which the initial decision otherwise would have become the decision of the Commission; and

The Commission upon consideration of the matter having concluded that the ground assigned in support of the respondents' request, namely, that the respondents' two major competitors are not now subject to a prohibition similar to that contained in subparagraph "c" of paragraph "1" of the order herein, does not justify the request, and, further, that in the circumstances the public interest would not be served by the requested modification:

It is ordered, That the respondents' request for modification of the order contained in the initial decision be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents, Vantage Press, Inc., a corporation, and Alan F. Pater and Arthur Kleinwald, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in the aforesaid initial decision.

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IN MATTER OF
THE GUMMED INDUSTRIES ASSOCIATION, INC., ET AL.

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

Docket 7079. Complaint, Mar. 3, 1958—Decision, Oct. 3, 1958

Consent order requiring a trade association and six of its seven members, together producing almost 100 per cent of the gummed paper products manufactured in the United States, to cease fixing and maintaining uniform prices and terms of sale for flat gummed paper and differentials for variations in products, or selling at zone delivered prices; and requiring such manufacturer-members to cease quoting or selling their products at prices determined in accordance with a geographical zone delivered price system, and using the Association as a clearing house to exchange price information.

As to the seventh manufacturer respondent, Minnesota Mining and Manufacturing Company, complaint was dismissed without prejudice on Mar. 7, 1959, p. 1409, herein.

By *Earl J. Kolb*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. John Perechinsky* for the Commission.

Sawyer & Marion, of New York, N.Y., by *Mr. Albert E. Sawyer*, for The Gummed Industries Association, Inc., and *Philip O. Deitsch*.

Mr. William H. Leahy, of Framingham, Mass., for Dennison Manufacturing Company.

Nutter, McClellenn & Fish, of Boston, Mass., for Nashua Corporation.

Covington & Burling, of Washington, D.C., by *Mr. H. Thomas Austern*, for Ludlow Papers, Inc.

Frost & Jacobs, of Cincinnati, Ohio, by *Mr. John C. Egbert*, for The Brown-Bridge Mills, Inc.

Mr. Homer Crawford, of New York, N.Y., for The Gummed Products Company.

MacCoy, Evans & Lewis, of Philadelphia, Pa., by *Mr. Mark Willcox, Jr.*, for Paper Manufacturers Company.

INITIAL DECISION AS TO CERTAIN RESPONDENTS

The complaint in this proceeding charges the respondents named therein with having entered into a combination and conspiracy to fix prices in violation of Section 5 of the Federal Trade Commission Act.

After the issuance of the complaint, the respondents, except Minnesota Mining and Manufacturing Company, a corporation, entered into an agreement containing a consent order to cease and desist with counsel supporting the complaint disposing of all the issues in this proceeding.

Said agreement provides, among other things, that said respondents admit all of the jurisdictional allegations in the complaint; that the record on which the initial decision and 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.

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 respondents hereinafter named and that this proceeding is in the interest of the public; and issues the following order:

Respondent, The Gummed Industries Association, Inc., is an incorporated trade association organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 11 West 42d Street, New York 36, N.Y.

Respondent Philip O. Deitsch is an individual, and is secretary-treasurer and managing director of said respondent Association. Respondent's address is 11 West 42d Street, New York 36, N.Y.

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Respondent Dennison Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located in Framingham, Mass.

Respondent Nashua Corporation (erroneously named in the complaint as a Massachusetts corporation and member of respondent The Gummed Industries Association, Inc.) is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 44 Franklin Street, Nashua, N.H.

Respondent Ludlow Papers, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at Needham Heights, Mass.

Respondent The Brown-Bridge Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located at Water Street, Troy, Ohio.

Respondent The Gummed Products Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio with its office and principal place of business located at South Union Street, Troy, Ohio.

Respondent Paper Manufacturers Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business located at 9800 Bustelton Avenue, Philadelphia, Pa.

ORDER

It is ordered, That respondent The Gummed Industries Association, Inc., an incorporated trade association, its officers, agents, representatives, and employees; respondent Philip O. Deitsch, individually and as secretary-treasurer and managing director of said association; and the corporate respondents Dennison Manufacturing Company, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacturers Company, independently and as members of said association, and Nashua Corporation, their respective officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of flat gummed paper, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course

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of action, understanding, agreement, combination or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or to perform any of the following things:

1. Establishing, fixing or maintaining uniform and identical prices, terms or conditions of sale for any kind of flat gummed paper, or adhering to any prices, terms or conditions of sale so established, fixed or maintained.

2. Quoting or selling flat gummed paper at prices calculated or determined in whole or in part pursuant to or in accordance with a zone delivered price system, or quoting or selling flat gummed paper pursuant to or in accordance with any other plan or system which results in identical price quotations or prices for flat gummed paper at points of quotation or sale or to particular purchasers by any two or more sellers of flat gummed paper using such plan or system, or which prevents purchasers from finding any advantage in price in dealing with one or more as against another seller.

3. Using in the quotation and sale of flat gummed paper the geographical zones, or the price differentials between such zones heretofore fixed for pricing purposes, or establishing, fixing or maintaining any geographical areas for pricing purposes, or any differentials in price between any such areas for use in quoting or selling flat gummed paper.

4. Exchanging or relaying, directly or through The Gummed Industries Association, Inc., or any other trade association, clearing house or agency, price lists or other information as to prices, discounts, terms or conditions of sale for flat gummed paper for the purpose or with the effect of restraining price competition in the sale and distribution of flat gummed paper.

5. Establishing, fixing or maintaining, in the quotation and sale of flat gummed paper, uniform and identical differentials in price for variations in color, size, weight, trim, type, quantity or packing of flat gummed paper, or adhering to any such differentials so established, fixed or maintained.

It is further ordered, That the corporate respondents, Dennison Manufacturing Company, Nashua Corporation, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacturers Company, their officers, agents, representatives and employees, in or in connection with the offering for sale, sale or distribution of flat gummed paper in commerce, as "commerce" is defined in the Federal Trade Commis-

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sion Act, do forthwith cease and desist from quoting or selling flat gummed paper at prices calculated or determined in whole or in part pursuant to or in accordance with a zone delivered price system for the purpose or with the effect of systematically matching the delivered price quotations or the delivered prices of other sellers of flat gummed paper and thereby preventing purchasers from finding any advantage in price in dealing with one or more sellers as against another.

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 as to certain respondents of the hearing examiner shall, on the 3d day of October 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Gummed Industries Association, Inc., Philip O. Deitsch, Dennison Manufacturing Company, Nashua Corporation, Ludlow Papers, Inc., The Brown-Bridge Mills, Inc., The Gummed Products Company, and Paper Manufacturers Company shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF
COLE STEEL EQUIPMENT CO., INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7127. Complaint, Apr. 18, 1958—Decision, Oct. 3, 1958*

Consent order requiring manufacturers of steel filing cabinets, with principal place of business in New York City, to cease representing falsely in catalogs and insert sheets furnished to their distributors that certain of their said filing cabinets were used in U.S. Government offices for the protection and preservation of secret and confidential documents and were suitable for such use by the Government and private industry.

Mr. Frederick McManus for the Commission.

Walzer & Walzer, of New York, N.Y., by *Mr. Martin J. Walzer*, for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding issued April 18, 1958, charges the respondent Cole Steel Equipment Co., Inc., a corporation, located at 415 Madison Avenue, New York, N.Y., with violation of the provisions of the Federal Trade Commission Act in the manufacture, sale and distribution of steel filing cabinets.

After the issuance of the complaint, said respondent entered into an agreement containing consent order to cease and desist with counsel in support of 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.

It was expressly provided in said agreement that the signing thereof is 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 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