

Complaint

IN THE MATTER OF
SPERRY RAND CORPORATION

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

Docket 6701. Complaint, Dec. 27, 1956—Decision, Nov. 3, 1958

Consent order requiring the largest producer of electric shavers in the United States, with sales volume for 1955 approximating \$44,000,000, to cease discriminating in price by selling its "Remington" electric shavers to any purchaser at net prices higher than those charged its competitors, and by paying advertising or other allowances in varying amounts to some customers but not to their competitors or in amounts not equal to the same percentage of the latter's net purchases; and to cease fixing and maintaining minimum wholesale and retail resale prices for its customers competing with its own wholly owned branches and its retail or service stores.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sperry Rand Corporation has violated, and is now violating, the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and has been, and is now, using unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public the Commission hereby issues its complaint charging as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent Sperry Rand Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Rockefeller Plaza,, New York, N.Y.

PAR. 2. Respondent Sperry Rand Corporation is the successor by consolidation or merger of Remington Rand, Inc., and the Sperry Corporation, which consolidation or merger became effective on June 30, 1955.

Respondent Sperry Rand Corporation is made up of two principal divisions, the Sperry division and the Remington Rand

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division. The Remington Rand Electric Shaver division, hereinafter sometimes referred to as the Electric Shaver division, is a division of the Remington Rand division of respondent corporation. The Electric Shaver division, both prior to and since the consolidation or merger of respondent corporation, has, to a considerable extent, operated independently, making its own policies and procedures, including its sales and advertising policies. The Remington Electric Shaver division accounts for the entire production and distribution of the Remington Electric Shaver. This division has its principal office and place of business located at 60 Main Street, Bridgeport, Conn.

Respondent also has approximately 26 branches and 130 service stores, located in major cities throughout the United States, which are engaged in the sale and distribution of respondent's electric shavers sold under the trade name of "Remington." Respondent has approximately 1,600 wholesale distributors, and between 35,000 and 70,000 retail dealers. Respondent's branches sell direct to a substantial number of these retail dealers in competition with its wholesale distributors. Respondent's service stores' major functions are to service and repair electric shavers, but they are also engaged, to a substantial degree, in the sale of respondent's electric shavers to the consuming public, in competition with respondent's retail dealers in the various cities in which these service stores are located.

Respondent is the largest producer of electric shavers in the United States, with a sales volume for the year 1955 of approximately \$44,000,000.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for the past several years has been engaged, in commerce as "commerce" is defined in the aforesaid Clayton Act, as amended, having sold and distributed its electric shavers manufactured in its plant in Bridgeport, Conn., and transported, or caused the same to be transported, from its place of business in Connecticut to purchasers located in other States of the United States and other places under the jurisdiction of the United States. Said shavers were, and are, sold for use, consumption, or resale within the various States of the United States and other places under the jurisdiction of the United States, and at least one or more of the sales in each discrimination in price alleged herein were in interstate commerce.

PAR. 4. Since the merger of the Sperry Corporation and Remington Rand, Inc., on June 30, 1955, respondent corporation

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has been and is now, engaged in the business of manufacturing, selling, and distributing electric shavers and related products, hereinafter sometimes referred to as shavers. For many years prior to June 30, 1955, this business was conducted in a similar manner by Remington Rand, Inc. Said shavers have been, and are now, marketed by respondent through its Electric Shaver Division located in Bridgeport, Conn., and through its approximately 26 branches and 130 service stores operated by said division in the various major cities throughout the United States, by three separate methods as follows:

(1) By selling to wholesale distributors, who resell to retail dealers;

(2) By selling direct to retail dealers in competition with its wholesale distributors located in the same trade area; and

(3) By selling to consumers, through its service stores, in competition with the above retail dealers located in the same cities.

It sells to its wholesale distributors at 50 percent off retail list price, and these wholesale distributors resell to retail dealers generally at 40 percent off retail list price. In selling direct to its retail dealers, respondent sells to some retail chains, or large retailers with more than one outlet, at the wholesale distributor's discount of 50 percent off retail list price, while selling its merchandise of like grade and quality at only 40 percent off said list price to other retail customers who compete with these favored retail chains.

PAR. 5. In the course and conduct of its business of selling its electric shavers of like grade and quality as aforesaid, respondent for some time past has been and is now discriminating in price, between its competing retail customers to whom it allows a 50 percent discount off the retail list price and those to whom it allows only a 40 percent discount off the retail list price of said shavers. This includes retail customers purchasing indirectly from respondent through its wholesale distributors at only 40 percent off said list price, where these customers compete with said retail customers purchasing direct from respondent at 50 percent off. The effect of such discrimination in price has been and may be substantially to lessen competition in the lines of commerce in which respondent or its purchasers are engaged, and to injure, destroy or prevent competition between respondent's favored and nonfavored customers, as alleged and described herein.

Said discriminations in price constitute violation of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended.

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Count II

Charging violation of subsection (d) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 6. Paragraphs 1 through 3 of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted here verbatim.

PAR. 7. In the course and conduct of its business in commerce, as aforesaid, respondent has paid or authorized payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation in consideration for services and facilities furnished or agreed to be furnished by or through such customers in connection with the processing, handling, sale or offering for sale of respondent's electric shavers and respondent has not made or contracted to make such payments, allowances, or considerations available on proportionally equal terms to all its other customers competing in the sale and distribution of such electric shavers.

Specifically, respondent during the past two years:

(1) Paid advertising or other allowances in varying amounts to some customers, but has not done so or offered to do so in any amount to other competing customers;

(2) In paying such advertising and other allowances, has done so to competing customers in amounts not equal to the same percentage of such competing customer's net purchases and not proportionally equal by any other test; and did not offer or otherwise accord or make available such allowances to all such competing customers in amounts equal to the largest of such percentages, or proportionally equal by any other test.

Such allowances in most instances were arbitrarily determined by individual negotiations between respondent and such retail customers direct; or between respondent, and the retail customers, through its wholesale distributors.

PAR. 8. The acts and practices as alleged in paragraph 7 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count III

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 9. Paragraphs 1 and 2 of Count I are hereby set forth by reference and made a part of this Count as fully and with the same effect as if set forth here verbatim.

PAR. 10. In the course and conduct of its business, respondent Sperry Rand Corporation has been for some time past, and is now, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has sold and distributed its electric shavers manufactured in its plant in Bridgeport, Connecticut, and transported, or caused the same to be transported, from its place of business in Connecticut to purchasers located in other States of the United States and other places under the jurisdiction of the United States.

PAR. 11. In the course and conduct of its said business in commerce, respondent has been and is now in competition with persons, firms, and other corporations likewise engaged in the manufacture, sale and distribution in commerce of electric shavers and related products. Many of the wholesale distributors to whom respondent sells such electric shavers and related products were, and are, in competition, some in commerce, with each other and with respondent's wholly owned and controlled branches which sell to retail dealers in competition with said wholesale distributors. Many of the retail dealers to whom respondent sells its electric shavers direct and also through its wholesale distributors were, and are, in competition, some in commerce, with each other and with respondent's wholly owned and controlled retail outlets or service stores, in the resale of respondent's electric shavers.

PAR. 12. Respondent has entered into contracts and agreements with a substantial number of its wholesale distributors whereby it has fixed and maintained, and now fixes and maintains, minimum resale prices at which such wholesale distributors shall sell respondent's electric shavers to retail dealers, with a further provision that said wholesale distributors are to request retailers to whom they sell not to sell or offer to sell any of respondent's products coming under this agreement for less than the minimum retail selling price fixed by respondent.

Respondent has also entered into contracts and agreements with many of its retail dealers to whom it sells its electric shavers direct, whereby respondent has fixed and maintained, and now fixes and maintains, the minimum prices at which such retail dealers or customers shall resell said shavers to the public.

Respondent has compelled many of its retail dealers who offer for sale and sell its electric shavers, and who have not entered into any contracts or agreements with respondent regarding sale prices, to observe the minimum resale prices fixed by respondent for said shavers.

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Respondent has and does now further maintain the observance of the fixed resale prices of its electric shavers and related products by prohibiting in connection with the resale thereof the offering or giving of any article of value, or the offering or making of any other concession or privilege which has the practical result of reducing the selling price of such products below the minimum resale price fixed by respondent.

PAR. 13. The said products for which respondent has fixed and maintained, and now fixes and maintains, the prices at which same are to be resold by both wholesale distributors and retail stores, have been and are now sold in competition with said wholesale distributors and retail stores by respondent's wholly owned and controlled branches, and retail or service stores.

PAR. 14. The contracts and agreements entered into by respondent with both its wholesale distributor customers and its retail dealer customers whereby it fixes and maintains the resale prices of its electric shavers and related products are illegal in that some of the said wholesale distributors and retail dealers are in competition with respondent's wholly owned and controlled branch outlets which sell in competition with its wholesale distributors and its wholly owned and controlled service stores which sell in competition with its retail dealers.

PAR. 15. The acts, practices, methods, and agreements of respondent, as hereinabove alleged and described, are all to the prejudice of the public, have a dangerous tendency to unduly hinder competition and create a monopoly in respondent in the sale of electric shavers, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. William H. Smith and Mr. James R. Fruchterman for the Commission.

Mr. Francis J. McNamara, of New York, N.Y., and Mr. G. A. Chadwick, Jr., of Washington, D.C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent, in connection with the sale and distribution in commerce of Remington Rand Electric Shavers, has discriminated in price between its competing retailer customers, in violation of §2(a) of the Clayton Act, as amended; has paid advertising or other allowances to certain of its customers, which were not made available on proportionally equal terms to all other of its customers competing in the resale

of its electric shavers, in violation of §2(d) of said Act; and has entered into agreements with both its wholesale distributor customers and its retail dealer customers, whereby it fixes and maintains the resale prices of its electric shavers and related products, in violation of §5 of the Federal Trade Commission Act, in that the respondent's wholly owned and controlled branches are in competition with some of respondent's said wholesale and retail customers.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order to cease and desist, which was approved by the director and an assistant director, Bureau of Litigation of the Commission, and thereafter transmitted to the hearing examiner for consideration.

Respondent Sperry Rand Corporation is identified in the agreement as a Delaware corporation, with its office and principal place of business located at 30 Rockefeller Plaza, New York, N.Y.

The agreement provides, among other things, that 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; that 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; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; 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 order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

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 the agreement.

The order agreed upon fully disposes of all the issues raised in the complaint, and adequately prohibits the acts and practices charged therein as being in violation of §2(a) and §2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C.,

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Title 15, §13), and of §5 of the Federal Trade Commission Act (U.S.C., Title 15, §45). Accordingly, the Hearing Examiner finds this proceeding to be in the public interest and accepts the agreement containing consent order to cease and desist¹ as part of the record upon which this decision is based. Therefore,

It is ordered, That the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that the customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended.

It is further ordered, That Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That respondent Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device in the course of its business in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer acquiring respondent's electric shavers and related products from respondent, from wholesalers, or from any other source, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, resale, or offering for resale of such products manufactured, sold, or offered for sale by respondent, unless such payment

¹ Published as corrected by commission order of Dec. 18, 1958.

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or consideration is made available on proportionally equal terms to all other such customers competing in fact with such favored customers in the resale or distribution of such products.

It is further ordered, That respondent Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Federal Trade Commission Act, do forthwith cease and desist from:

Fixing, establishing or maintaining by, or in accordance with the terms or conditions of, any contract, agreement or understanding, the prices, terms or conditions of sale at which its electric shavers or related products produced, distributed, or sold, directly or indirectly by respondent are to be resold by any wholesaler or retailer when such products are being sold or offered for sale in competition with any branch, retail or service store, establishment, or business owned or controlled by any means or method, by respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The hearing examiner, on July 9, 1958, having filed an initial decision in this proceeding based on an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint, and the Commission, on August 25, 1958, having extended, until further order, the date on which said initial decision would otherwise become the decision of the Commission; and

It appearing that the aforesaid agreement is subject to the condition that an initial decision based thereon shall not become the decision of the Commission until and unless the Commission issues an order to cease and desist under Counts I, II, III and IV in the matter of *Schick Incorporated, et al.*, Docket No. 6892, and under Counts II and III in the matter of *North American Philips Company, Inc.*, Docket No. 6900, and that, such orders being issued in the aforementioned matters simultaneously with this action, the condition is met; and

It further appearing that subsequent to the filing of the said initial decision, counsel in support of the complaint, with the concurrence of respondent, filed in their own behalf and in behalf of the respondent a motion requesting modification of the initial decision (1) by dismissing without prejudice such parts

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of the complaint as are specified in the motion, and (2) by correcting a typographical error in the order, changing the word "favored" to "unfavored" in the indented portion of the first paragraph thereof; and

The Commission having determined that the requested modification of the initial decision is appropriate, the motion of counsel supporting the complaint in behalf of the parties to the proceeding is granted hereby:

Accordingly, it is ordered, That the said initial decision of the hearing examiner be, and it hereby is, modified by substituting the following for the first paragraph of the order:

It is ordered, That the allegations contained in Count I of the complaint to the extent that such charge the respondent with violating Section 2(a) of the Clayton Act, as amended, by reason of the fact that the customers of respondent's wholesaler-purchasers are alleged to be purchasers of respondent be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondent at any time in the future as may be warranted by the then existing circumstances; provided that nothing herein shall be construed as limiting the meaning of the term "purchaser" in the order to cease and desist in this matter from its full meaning under Section 2(a) of the Clayton Act, as amended.

It is further ordered, That Sperry Rand Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of electric shavers and related products, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That the said initial decision, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further 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 contained in the said initial decision, as modified.

Commissioner Kern not participating.

Complaint

IN THE MATTER OF
SCHICK INCORPORATED AND SCHICK SERVICE, INC.

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

Docket 6892. Complaint, Sept. 24, 1957—Decision, Nov. 3, 1958

Consent order requiring a major producer of electric shavers, with net sales in 1956 in excess of \$27½ million, along with its corporate sales and service agent, to cease discriminating in price by selling its electric shavers to certain purchasers at net prices higher than those charged their competitors at wholesale and retail sale, by paying advertising or other allowances in varying amounts to some customers but not to their competitors or in amounts not equal to the same percentage of the competitors' net purchases, and by furnishing to certain customers but not to their competitors, demonstrators to give free shaves and to repair and clean shavers brought in by customers; and to cease fixing and maintaining minimum resale prices for its customers with whom they were in competition in the wholesale and retail sale, and representing falsely that purchasers of the man's shaver known as "Schick 25" would receive a "Lady Schick."

COMPLAINT

The Federal Trade Commission, having reason to believe that Schick Incorporated and Schick Service, Inc., have violated, and are now violating, the provisions of subsection (a) and that Schick Incorporated has violated, and is now violating, the provisions of subsections (d) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and that Schick Incorporated and Schick Service, Inc., have been, and are now, using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest the Commission hereby issues its complaint charging as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondents named herein are Schick Incorporated and Schick Service, Inc.