

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.

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Respondents are corporations organized and existing under and by virtue of the laws of the State of Delaware. Respondents' principal offices and place of business are located at 216 Greenfield Road, Lancaster, Pa.

PAR. 2. Respondent Schick Incorporated is a major producer and seller of electric shavers in the United States, which it manufactures at its factory located at Lancaster, Pa., and sells under the trade name "Schick."

PAR. 3. Respondent Schick Service, Inc., is a wholly owned subsidiary of respondent Schick Incorporated, by which it is controlled and dominated. Said respondent is an instrumentality of its parent, and to all intents and purposes is operated as a division or department of respondent Schick Incorporated.

Respondent Schick Service, Inc., is engaged in the business of servicing and repairing electric shavers manufactured by respondent Schick Incorporated. Said respondent sells electric shavers which it obtains from its parent, respondent Schick Incorporated, and repair parts, replacement parts, and accessories therefor. Respondent Schick Service, Inc., maintains its headquarters on the premises occupied by its parent company, respondent Schick Incorporated, at Lancaster, Pa., and maintains about 65 service branches located in principal cities of the United States.

The consolidated net sales of respondent Schick Incorporated and its wholly owned subsidiaries, including respondent Schick Service, Inc., for the year 1956 amounted to \$27,512,830.

PAR. 4. Respondents Schick Incorporated and Schick Service, Inc., sell electric shavers of like grade and quality to a large number of purchasers located throughout the United States for use, consumption, or resale therein.

Electric shavers sold by respondents to such purchasers are shipped either from the factory of respondent Schick Incorporated at Lancaster, Pa., from the stores of respondent Schick Service, Inc., or from points of storage located throughout the United States where such shavers may be temporarily stored or kept in anticipation of sale and shipment.

PAR. 5. In the course and conduct of their business respondents are now and for many years past have been shipping "Schick" electric shavers from the state or states where such products are manufactured, kept, or stored to customers located in other States and in the District of Columbia in a constant current of commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 6. In the course and conduct of their business in com-

merce respondents have been and are 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 respondents' purchasers are in competition with one another at their respective levels of trade.

Respondents sell "Schick" electric shavers to wholesalers, retailers, and consumers. Sales are made to wholesalers, retail chain stores, large department stores, mail order houses, and a number of other retail outlets direct from the factory of respondent Schick Incorporated at Lancaster, Pa. Other sales are made to retailers and consumers from the various stores and shops of respondent Schick Service, Inc.

The wholesaler-purchasers of respondent Schick Incorporated resell Schick electric shavers to retailers. It is alleged that such retailers are purchasers of respondent Schick Incorporated within the meaning of the Clayton Act, as amended. As illustrative of such relationship, respondent Schick Incorporated recognizes retailers buying through its wholesaler-purchasers by personally soliciting them through its own sales force, by drop shipping shavers to them ordered by wholesalers, by making effective its price policies and schedules as applied to its wholesaler-purchasers and their retailer-customers wherever the same are legal, and by dealing directly with such retail customers with respect to its advertising programs promoting the sale of "Schick" shavers and accessories.

Many of the direct purchasers of respondent Schick Incorporated who purchase said respondent's electric shavers represent themselves to said respondent as being wholesalers, and are granted wholesaler's discounts when in truth and in fact said purchasers are retailers and not wholesalers, and are therefore competing purchasers with said respondent's indirect retailer-purchasers and with direct buying retailer-purchasers of respondent Schick Service, Inc., as hereinbefore described. In many instances this is accomplished by the use of dummy or fictitious buying devices or instrumentalities often in the form of commonly owned or controlled corporations, subsidiaries, instrumentalities, or affiliates of large retail chains representing themselves to said respondent as doing a legitimate wholesale business, when in truth and in fact their only business is to buy at wholesale for the particular retail chain with which they are so affiliated and identified.

PAR. 7. In the course and conduct of its business in commerce,

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respondent Schick Incorporated has discriminated in price in the sale of "Schick" electric shavers by selling such shavers of like grade and quality at different prices to different and competing purchasers.

Illustrative of such sales at discriminatory prices are the following pricing practices of said respondent:

During the year 1956 respondent Schick Incorporated sold electric shavers to its direct retailer-purchasers at discounts of 49% and 50% from list and to competing indirect retailer-purchasers who bought through wholesalers at discounts of about 40% from list. Wholesalers were sold at list less 50%. Beginning in January 1957 said respondent sold electric shavers to its direct retailer-customers at discounts from list of approximately 48%, and to competing indirect retailer-purchasers who bought through wholesalers at discounts from list substantially less than the 48% granted to competing direct retailer-purchasers. The price to wholesalers was list less 48%.

PAR. 8. Both respondent Schick Incorporated and Schick Service, Inc., have discriminated in price in the sale of electric shavers between retail dealer-purchasers buying from the various service stores and shops operated by respondent Schick Service, Inc., at 35 to 40% from list, and direct retail competing dealer-purchasers buying electric shavers of like grade and quality from the factory of respondent Schick Incorporated at 49% and 50% from list.

PAR. 9. The effect of said discriminations in price by respondents in the sale of "Schick" electric shavers has been or may be to lessen, injure, destroy, or prevent competition:

1. Between respondents and their competitors in the manufacture, sale, and distribution of electric shavers.

2. Between direct buying purchasers of respondent Schick Incorporated who are retailers in fact and competing indirect buying retailers of said respondent who purchase through wholesalers.

3. Between direct buying purchasers of respondent Schick Incorporated who are retailers in fact and competing retailer purchasers buying from the stores and shops of Schick Service, Inc.

PAR. 10. The discriminations in price as herein alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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Count II

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

PAR. 11. Paragraphs 1 through 6 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. 12. In the course and conduct of its business in commerce as aforesaid, respondent Schick Incorporated has paid or authorized payment of money, goods, or other things of value to or for the benefit of some of its direct and indirect customers as compensation in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondent's electric shavers and respondent has not made or contracted to make such payments, allowances, or consideration available on proportionally equal terms to all of its other direct and indirect customers competing in the sale and distribution of such electric shavers.

As illustrative of such practices respondent has:

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

(2) In paying such advertising and other allowances, has done so to competing direct and indirect customers in amounts not equal to the same percentage of such competing direct and indirect 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 direct and indirect customers in amounts equal to the largest of such percentages, or proportionally equal by any other test.

Such allowances in most instances are determined by individual selections or negotiations by or between respondent and its direct and indirect retail customers.

PAR. 13. The acts and practices as alleged in paragraphs 11 and 12 above are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Count III

Charging violation of subsection (e) of Section 2 of the Clayton Act, as amended:

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PAR. 14. Paragraphs 1 through 6 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. 15. In the course and conduct of its business in commerce, respondent Schick Incorporated has discriminated in favor of many of its purchasers, both direct and indirect, and against other of its competing purchasers, both direct and indirect, buying Schick electric shavers for resale by contracting to furnish or furnishing or by contributing to the furnishing to such favored competing purchasers services or facilities connected with the handling, sale, or offering for sale of such commodities so purchased upon terms not accorded to said nonfavored competing purchasers, both direct and indirect on proportionally equal terms.

As illustrative of such practices, respondent has furnished certain of its direct and indirect retail customers a demonstrator or demonstrators for week ends or other periods of time for the purpose of giving free shaves and demonstrations of Schick electric shavers to prospective customers, and to repair Schick shavers brought into said favored retailer-purchaser's stores by customers and to give such shavers a free cleaning, while not according such demonstrator and other services to all other direct and indirect competing purchasers on proportionally equal terms.

PAR. 16. The acts and practices as alleged in paragraphs 14 and 15 above are in violation of subsection (e) of Section 2 of the aforesaid Clayton Act as amended.

Count IV

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

PAR. 17. Paragraphs 1 through 4 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 herein verbatim.

PAR. 18. In the course and conduct of their business respondents are now and for many years past have been shipping "Schick" electric shavers from the state or states where such products are manufactured, kept, or stored to customers located in other States and in the District of Columbia in a constant current of commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 19. In the course and conduct of their said business in commerce, respondents have been and are 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. Respondent Schick Incorporated sells its electric shavers and accessories therefor primarily through approximately 1,000 wholesale distributors or jobbers, principally electrical, drug, jewelry, and hardware distributors. In addition, said respondent sells said products direct to approximately 250 retail accounts, principally larger department stores, credit jewelers, chain stores, mail order houses, and certain other retail outlets. Respondent Schick Service, Inc., sells Schick shavers in its various stores and service shops to retail dealers and consumers.

Many of the wholesale distributors to whom respondent Schick Incorporated sells "Schick" electric shavers and related products were, and are, in competition, some in commerce, with each other and with said respondents Schick Incorporated and Schick Service, Inc., which sell to retail dealers in competition with said wholesale distributors. Many of the retail dealers to whom respondent Schick Incorporated and respondent Schick Service, Inc., sell "Schick" electric shavers were and are in competition, some in commerce, with each other and with respondent Schick Service, Inc., in the resale of "Schick" electric shavers to consumers.

PAR. 20. Respondent Schick Incorporated has entered into contracts and agreements with a substantial number of its wholesale distributors or jobbers whereby it has fixed and maintained, and now fixes and maintains, minimum resale prices at which such wholesale distributors or jobbers shall sell respondent's electric shavers to retail dealers with the further provision that said wholesale distributors or jobbers will sell at wholesale only and will not sell any Schick product to consumers for use.

Respondent Schick Incorporated has also entered into contracts and agreements with many of its retail dealers both direct and indirect to whom respondents Schick Incorporated and Schick Service, Inc., or wholesale distributors or jobbers sell Schick electric shavers, whereby respondent Schick Incorporated has fixed and maintained and now fixes and maintains the minimum prices at which such retail dealers shall resell said shavers to the public.

Respondent Schick Incorporated has compelled many of its retail dealers, both direct and indirect, who offer for sale and sell Schick electric shavers, and who have not entered into any contracts or agreements with respondent regarding resale prices, to

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observe the minimum resale prices fixed by respondent for said shavers.

Said 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. 21. The said products for which respondent Schick Incorporated has fixed and maintained and now fixes and maintains the prices at which same are to be resold by both wholesale distributors or jobbers and retail stores, have been and are now sold by respondents Schick Incorporated and Schick Service, Inc., in competition with said wholesale distributors or jobbers which are the customers of Schick Incorporated and sold by respondent Schick Service, Inc., in competition with retail stores which are customers of both respondents Schick Incorporated and Schick Service, Inc.

PAR. 22. The contracts and agreements entered into by respondent Schick Incorporated with both its wholesale distributor or jobber customers and its retail dealer customers, both direct and indirect, whereby it fixes and maintains the resale prices of its electric shavers and related products, including such products sold by and through respondent Schick Service, Inc., are illegal in that many of the said wholesale distributors or jobbers are in competition with respondents Schick Incorporated and Schick Service, Inc., in the sale of Schick products to retailers and are further illegal in that some of said retail dealers are in competition with respondent Schick Service, Inc., in the resale of Schick shavers and accessories to consumers.

PAR. 23. The acts, practices, methods, and agreements of respondents, 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 respondents in the sale of electric shavers, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 24. Charging further violations of the Federal Trade Commission Act, it is alleged that for many years past respondent Schick Incorporated has manufactured and sold electric shavers

for men. Some time prior to January 14, 1957, said respondent designed and manufactured a Schick shaver for use by women, commonly referred to as "Lady Schick."

On or about January 14, 1957, through the use of statements and representations appearing in advertisements in newspapers, magazines, circulars, price lists, and in commercial announcements to the public made over radio and television, respondent Schick Incorporated represented that with the purchase of a man's shaver known as the "Schick 25" there would be given free to the customer a "Lady Schick." Such representations and statements were broadcast and disseminated to the public under the slogan "BUY HIS—GET HERS FREE." A certificate was contained in the cartons of Schick 25's shipped from respondent's factory after the effective date of the offer, entitling the purchaser to a Lady Schick shaver which would be sent by respondent to the purchaser from its factory in Lancaster, Pennsylvania, upon receipt of the certificate. It was required by respondent that this certificate be sent to its factory in order for the purchaser to be entitled to receive a "Lady Schick" shaver.

Respondent, as alleged, inaugurated and put into effect this "Lucky Lady Special Offer" on or about January 14, 1957, which was to expire on April 30, 1957, but it was continued until on or about May 15, 1957. Shortly thereafter respondent came out with a new model of the Schick 25 for men. Prior to the beginning of this so-called special offer the fair trade retail price of the Schick 25 was \$29.50 and at such price respondent permitted a trade-in allowance of \$7.50 on an old shaver, thus reducing the net price to \$22. During the period of time that the so-called "Lucky Lady Special Offer" was in effect the fair trade price of the Schick 25 remained at \$29.50 but on any sale of a Schick 25 which contained the "Lucky Lady Special Offer Certificate" no trade in allowance was permitted. In other words, if a purchaser desired to get the \$7.50 trade in allowance on the purchase of a Schick 25 during the period of this so-called special offer, he could obtain the allowance on a single purchase of a Schick 25 at the fair trade price of \$29.50, but he could not receive the "Lucky Lady" certificate on these terms.

At about the time of the making of this offer by respondent on January 14, 1957, respondent increased the price of its Schick 25 shavers to wholesalers, which in turn increased their price to retailers. While respondent did not increase the fair trade price

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of retailers to consumers theretofore fixed by respondent, in States where fair trade agreements were legal, in the District of Columbia where "Fair Trade" is not in force, the effect of respondent's price increase was to cause retailers to increase the price of Schick 25's to consumer purchasers during the duration of the "Lucky Lady" offer. Shortly after the expiration of the Lucky Lady Special Offer and just prior to the marketing of its new model Schick 25, respondent sharply reduced the wholesale, retail, and consumer prices of Schick 25's then in stock.

PAR. 25. It is alleged that the statements, representations, and advertisements hereinabove referred to in paragraph 24 were false, misleading, and deceptive for the reason that the Lady Schick shaver represented by respondent to be free with the purchase of a Schick 25 was not in truth and in fact free. This is by reason of the fact that respondent's refusal to accept a trade in in those instances where a Schick 25 was purchased with the "Lucky Lady Special Offer Certificate" was in effect an increase in the price of the Schick 25, thereby rendering the advertised offer to the consumer to get a Lady Schick free both false and misleading; also by reason of the fact that respondent's increase in the price of its Schick 25 to its wholesalers and dealers during the period of this offer had the effect of requiring the retail dealers to charge more for the Schick 25 in places, including the District of Columbia, where fair trade is not in force and effect.

Respondent Schick Service, Inc., was a party to the promotional plan as hereinbefore alleged by selling to the consuming public many Schick shavers with the "Lucky Lady Certificates" attached, under the terms and conditions imposed by respondent Schick Incorporated.

PAR. 26. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations, and advertising has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertising were and are true, and into the purchase of a substantial number of said electric shavers because of said erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondent Schick Incorporated and to respondent Schick Service, Inc., from their competitors and injury has thereby been done to competition in commerce.

PAR. 27. The aforesaid acts and practices of respondents as herein alleged in paragraphs 24 to 26, inclusive, are all to the

prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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

Dunnington, Bartholow & Miller, New York, N.Y., by *Mr. R. Daniel Saxe, Jr.*, for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on September 24, 1957, issued its complaint herein, charging the above-named respondents with having violated certain provisions of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45) and of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), and the respondents were duly served with process.

On June 24, 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 counsel for both parties on May 9, 1958, and subsequently approved by the Bureau of Litigation of the Commission.

The hearing examiner, upon due consideration of such agreement, finds that, both in form and in content, it 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. Respondents Schick Incorporated and Schick Service, Inc., are corporations existing and doing business under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 216 Greenfield Road, in the City of Lancaster, State of Pennsylvania.

2. Pursuant to the provisions of the Clayton Act as amended, and the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1957, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on each respondent.

3. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if

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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. 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.

6. 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.

7. This agreement is entered into subject to the condition that the effective date of the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission in this matter until and unless the Commission issues orders to cease and desist under Counts I, II, and III *In the Matter of Sperry Rand Corporation*, Docket 6701, and under Counts II and III *In the Matter of North American Philips Company, Inc.*, Docket 6900.

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.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" 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 a legal cause for complaint under the Federal Trade Commission Act and the Clayton Act as amended by the Robinson-Patman Act, against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of 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 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 customers of respondents' wholesaler-purchasers are alleged to be purchasers of respondents be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondents 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 in Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their 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 Schick Incorporated, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in the course

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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 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 Schick Incorporated, 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 discriminating among competing purchasers:

By contracting to furnish, or furnishing or by contributing to the furnishing of demonstrator services, or any other services or facilities connected with the handling, resale, or offering for resale of respondent's electric shavers and related products, to any purchaser acquiring such products from respondent, from wholesalers, or from any other source, unless such services or facilities are accorded on proportionally equal terms to all other such purchasers who compete in fact with such favored purchasers in the resale or distribution of such products.

It is further ordered, That respondent Schick Incorporated, 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 of-

ferred for sale in competition with any branch, retail or service store, establishment, or business owned or controlled, by any means or method, by respondent.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their 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 Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "free," or any other word or words of similar import or meaning, in advertising or in other offers to the public, to designate or describe any electric shaver or related products:

1. When all of the conditions, obligations or other prerequisites to the receipt and retention of the "free" article of merchandise are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the advertisement or offer might be misunderstood; or

2. When, with respect to the article of merchandise required to be purchased in order to obtain the "free" article, the offerer either (a) increases the ordinary and usual price; or (b) reduces the quality; or (c) reduces the quantity or size of such article of merchandise.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The hearing examiner, on July 28, 1958, having filed an initial decision in this proceeding based on an agreement containing a consent order to cease and desist theretofore executed by respondents and counsel in support of the complaint, and the Commission, on September 15, 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, and III in the matter of *Sperry Rand Corporation*, Docket No. 6701, 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

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initial decision counsel in support of the complaint, with the concurrence of respondents, filed in their own behalf and in behalf of respondents a motion requesting modification of the initial decision (1) by dismissing, without prejudice, such parts 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 customers of respondents' wholesaler-purchasers are alleged to be purchasers of respondents be, and they hereby are, dismissed, without prejudice, however, to the right of the Commission to take such further or other action against respondents 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 in Section 2(a) of the Clayton Act, as amended, nor in any manner as affecting or limiting the adoption and reallegation of the allegations of paragraph 6 of Count I as a part of Counts II and III of the complaint.

It is further ordered, That respondents Schick Incorporated and Schick Service, Inc., their 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

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herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents herein 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 said initial decision, as modified.

Complaint

55 F.T.C.

IN THE MATTER OF
NORTH AMERICAN PHILIPS COMPANY, INC.

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECS. 2(a), 2(d), AND 2(e) OF THE CLAYTON ACT

Docket 6900. Complaint, Sept. 27, 1957—Decisions, Nov. 3, 1958

Consent orders requiring a major seller of electric shavers for men and women, with net sales in 1956 approaching \$29,000,000, to cease discriminating in price by selling "Norelco" electric shavers to some purchasers at net prices higher than those charged their competitors; by making varying advertising allowances to some customers but not to their competitors on an equal basis under its "Share the Cost" advertising agreement or as push money or prize money, production and engraving charges, art charges, etc.; and by furnishing to certain retail customers free of charge its salaried personnel as demonstrators and service men to sell, repair, and demonstrate its electric shavers.

COMPLAINT ¹

The Federal Trade Commission, having reason to believe that North American Philips Company, Inc., has violated and is now violating the provisions of subsections (a), (d), and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13), 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 named herein is North American Philips Company, Inc. Respondent is a corporation organized and existing under and by virtue of the laws of the State of Delaware. Respondent's principal office and place of business is located at 100 East 42nd Street, New York City, N.Y.

PAR. 2. Respondent is one of the major sellers and distributors of electric shavers for men and women in the United States, which it sells under the trade name "Norelco." For 1956 net sales of respondent and its affiliated companies for all products, including sales of electric shavers and parts therefor, amounted to \$28,795,334.58.

PAR. 3. Respondent sells electric shavers of like grade and

¹ Complaint is published as amended by order of May 15, 1958.