

Complaint

IN THE MATTER OF
SIMON HAFNER DOING BUSINESS AS
HAFNER COFFEE COMPANY

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

Docket 6961. Complaint, Nov. 26, 1957—Decision, Dec. 3, 1958

Consent order requiring a Pittsburgh company preparing and selling coffee under some 1,000 different private brand names and its own trade name to grocery wholesalers and jobbers, with annual sales approximating \$3,000,000, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act by paying certain customers an allowance for advertising in connection with the sale of its coffee products while not making such payments available to their competitors on proportionally equal terms.

AMENDED COMPLAINT ¹

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Simon Hafner is an individual and does business under the trade style Hafner Coffee Company with his office and principal place of business located at Union Street, Etna, Pittsburgh, Pa.

PAR. 2. Respondent is now, and has been, engaged in the business of preparing and selling coffee. Respondent sells his coffee under approximately 1,000 different private brand names, and under his own trade name "Hafner." Respondent sells his products to grocery wholesalers and jobbers, and directly to customers who sell at retail, including chain store organizations. Sales made by respondent of his products are substantial amounting to approximately \$3,000,000 a year.

PAR. 3. In the course and conduct of his business respondent has engaged, and is now engaging, in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships his products, or causes them to be transported, from his principal

¹ Complaint is published as amended by order of July 25, 1958.

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place of business located in the State of Pennsylvania to customers located in the same and other States of the United States.

PAR. 4. In the course and conduct of his business in commerce respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of his customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1956 respondent contracted to pay and did pay to Century Food Markets Company of Youngstown, Ohio, \$750 as compensation or as an allowance for advertising or other service or facility furnished by or through Century Food Markets Company in connection with their offering for sale or sale of products sold to them by respondent. Such compensation or allowance was not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing with Century Food Markets Company in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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

Mr. Harry L. Lentchner and *Mr. Paul J. Winschel*, of Pittsburgh, Pa., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, §13), as amended by the Robinson-Patman Act.

The complaint was amended pursuant to an order of the Commission, and on October 8, 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 respondent and the attorneys for both parties, under date of

October 6, 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 Simon Hafner is an individual and does business under the trade style Hafner Coffee Company with his office and principal place of business located at Union Street, Etna, Pittsburgh, Pa.

2. Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, the Commission, on November 26, 1957, issued its complaint in this proceeding against Hafner Coffee Company and a true copy was thereafter duly served on Hafner Coffee Company. Thereafter, the amended complaint was issued and served upon respondent, Simon Hafner, an individual doing business as Hafner Coffee Company, in lieu of Hafner Coffee Company, and a true copy was thereafter duly served upon respondent, Simon Hafner.

3. Respondent admits all the jurisdictional facts alleged in the amended complaint and agrees 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. Respondent waives:

- (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 amended complaint and this agreement.

7. This agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the amended complaint.

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.

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Upon due consideration of the amended 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 amended 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 person of the respondent herein; that the amended complaint states a legal cause for complaint under the Clayton Act against the respondent 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 respondent Simon Hafner, an individual doing business as Hafner Coffee Company, directly or through any corporate or other device in or in connection with the sale of coffee and instant coffee, in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's coffee or instant coffee, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 3d day of December 1958, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Simon Hafner, an individual

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doing business as Hafner Coffee Company, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

IN THE MATTER OF
BANK STREET CLOTHES, INC., ET AL.

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

Docket 7198. Complaint, July 18, 1958—Decision, Dec. 3, 1958

Consent order requiring manufacturers in New York City to cease violating the Wool Products Labeling Act by falsely labeling men's suits as "All Wool Exclusive of Ornamentation"; by improperly describing a portion of the fiber content as "worsted"; by failing in other respects to conform to the labeling requirements of the Act; and by furnishing false guaranties that certain of their products were not misbranded.

Mr. Garland S. Ferguson for the Commission.
Respondents, for themselves.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondents with misbranding certain of their wool products, and with furnishing false guaranties that said products were not misbranded, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and of the Federal Trade Commission Act.

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

The agreement states that respondent Bank Street Clothes, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Avenue, New York, N.Y., and that individual respondents Jack Lifshitz, Seymour Lindell and Jerry Lindell are officers of said corporate respondent and formulate, direct and control the acts, practices and policies thereof, their address being the same as that of the corporate respondent.

The agreement provides, among other things, that the 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 al-