

Complaint

IN THE MATTER OF
JANTZEN, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF THE CLAYTON ACT*Docket 7247. Complaint, Sept. 4, 1958—Decision, Jan. 16, 1959*

Consent order requiring a clothing manufacturer in Portland, Ore., with annual sales in 1957 in excess of \$44,000,000, to cease discriminating in price by paying advertising allowances to certain favored customers—such as 50% of newspaper advertising costs for its summer wear and sweater lines, to the limit of 5% of purchases where the initial order for a season amounted to \$5,000 or more—without making such payments available to their competitors on proportionally equal terms.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated Section 2(d) of the amended Clayton Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint as follows:

PARAGRAPH 1. Respondent Jantzen, Inc., is a Nevada corporation with its offices and place of business located at Jantzen Center, 411 NE. 19th Avenue, Portland 8, Oreg.

PAR. 2. Respondent is principally engaged in the manufacture, distribution, and sale of clothing such as summer wear, sweaters, and children's wear.

PAR. 3. These products are sold by respondent for use, or resale within the United States. Respondent causes them to be shipped and transported from the State of location of their principal place of business to purchasers located in States other than the State wherein shipment or transportation originated.

Respondent maintains a course of trade in commerce in such products among and between the States of the United States.

PAR. 4. Respondent ships and sells throughout the United States and world markets to some twelve thousand active accounts. Respondent is licensed to do business in eight States, four in the Western United States and four in the Eastern United States. Distribution is exclusively to retailers located in the various market areas throughout respondent's territories, and sales to retailers are made direct.

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Respondent's annual volume of sales for the fiscal year ending August 31, 1957 was in excess of \$44 million dollars.

PAR. 5. Respondent, in the course and conduct of its business in commerce, has been paying advertising allowances to certain favored purchasers without making the allowances available on proportionally equal terms to all other purchasers competing in the distribution of its products.

For example, respondent has for several years utilized standard printed cooperative newspaper agreements covering summer wear lines and sweater lines under which, in accordance with specified conditions, respondent pays fifty percent of advertising costs to the limit of five percent of the favored purchasers' total net purchases provided the initial order of a season for the merchandise involved amounts to \$5,000 or more.

Such allowances were not made available on proportionally equal terms by respondent to other purchasers competing in the resale of respondent's products with those receiving the allowances.

PAR. 6. The foregoing acts and practices of respondent, as alleged, violate Section 2(d) of the amended Clayton Act (U.S.C. Title 15, Sec. 13).

Mr. Franklin A. Snyder for the Commission.

Mr. Lee Finders, of Portland, Oreg., 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 the Federal Trade Commission Act in certain particulars.

On November 25, 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 and between respondent and the attorneys for both parties, under date of November 10, 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 Jantzen, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at Jantzen Center, 411 NE. 19th Avenue, Portland 8, Oreg.

2. Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 4, 1958, issued its complaint in this proceeding against respondent, and a true copy was thereafter duly served on respondent.

3. 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.

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

8. This 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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. 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," 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 juris-

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diction of the subject matter of this proceeding and of the person of the respondent; that the complaint states legal causes for complaint under the Clayton Act,¹ 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 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 Jantzen, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in connection with, the sale of clothing in commerce, as "commerce" is defined in the amended Clayton Act, 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 any of respondent's products, 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 16th day of January 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Jantzen, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

¹ The Commission on Mar. 26, 1959 issued an order granting motion, reopening and modifying decision by substituting the words "the Clayton Act" for the words "the Federal Trade Commission Act".

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IN THE MATTER OF
LITCHFIELD WOOLEN MILLS CO., ET AL.

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

Docket 7257. Complaint, Sept. 12, 1958—Decision, Jan. 20, 1959

Consent order requiring a manufacturer in Litchfield, Minn., to cease violating the Wool Products Labeling Act by labeling and invoicing as "90% wool, 10% reprocessed wool" and "30% wool, 70% reused wool," blankets which contained substantially less wool than thus represented and substantial quantities of other fibers.

Mr. William A. Somers for the Commission.

Firestone & Firestone, of St. Paul, Minn., for respondents.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder and the Federal Trade Commission Act. An agreement has now been entered into by respondents and counsel supporting the complaint which provides, among other things, that 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, 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 respondents that they have violated the law as alleged in the complaint.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the