

Complaint

55 F.T.C.

IN THE MATTER OF
WARD BAKING COMPANY

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

Docket 6833. Complaint, July 8, 1957—Decision, Feb. 10, 1959

Consent order requiring a baking corporation in New York City, with net sales in 1956 exceeding \$100,000,000, to cease discriminating in price in violation of Section 2(d) of the Clayton Act by granting promotional allowances to some customers but not to their competitors and not on proportionally equal terms, such as payment of 5% of the wholesale price on purchases in excess of \$50 a week to retailers in the New Haven, Conn., and Philadelphia, Pa., trading areas.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ward Baking Company, hereinafter designated as respondent, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Ward Baking Company is a corporation organized 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 475 Fifth Avenue, New York City, N.Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the business of baking and selling bakery products including bread, cakes, rolls and pies. Said products are sold to customers with places of business located in the several States of the United States and in the District of Columbia, for resale to the purchasing public. Respondent is an interstate enterprise conducting its business from 23 baking facilities located throughout the United States. Its net sales in 1956 exceeded \$100,000,000.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped its products from the place where such products are manufactured in various States of the United States to its customers having places of business located in other States of the United States and in the District of Colum-

bia. There is and has been a constant stream of trade in commerce in respondent's products among the various States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, as aforesaid, respondent has paid or contracted to pay, 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 contracted to be furnished, by or through such customers in connection with the processing, handling, sale, or offering for sale of the products which respondent bakes, sells, or offers for sale; and respondent has not made or contracted to make such payments or considerations available on proportionally equal terms to all its other customers competing in the sale and distribution of such products.

PAR. 5. Specifically, respondent during the past two years:

1. Paid allowances to some customers, but did not do so or offer to do so in any amount, to other competing customers.

2. When paying such allowances to competing customers, required some of them to comply with certain terms and to furnish reciprocal services, but did not require others to do so in any manner or required them to do so in a less burdensome manner or in lesser amounts, and not proportionally equal by any test.

3. In determining allowances to be paid competing customers, did so on the basis of promotional agreements with each such customer, allowing a 5% allowance of the regular wholesale price to customers who purchased in excess of \$50 weekly of respondent's products, which resulted in proportionally unequal, different and arbitrary terms.

PAR. 6. Allowances, paid by respondent as aforescribed, include those offered and granted to certain favored customers, but not to other competing customers, in consideration for newspaper and handbill advertising and placement in such favored customers' retail outlets of posters, signs, window and counter displays and other like items advertising respondent's various products. Said allowances have been granted and are being granted by respondent in several trading areas, including the trading areas of New Haven, Conn. and Philadelphia, Pa.

A great majority of respondent's customers, located in these same trade areas and in competition with the favored customers, do not receive and have not received any such allowances from respondent.

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PAR. 7. The acts and practices of respondent, as above alleged, violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. (U.S.C. Title 15, Sec. 13.)

Mr. William W. Rogal and Mr. Franklin A. Snyder for the Commission.

Sullivan & Cromwell, by *Mr. John F. Dooling, Jr.*, of New York, N.Y., for respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on July 8, 1957, charging respondent with making payments, during the two preceding years, to certain favored customers, which payments were not made available on proportionally equal terms to other competing customers, in violation of §2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, §13).

Thereafter, on December 1, 1958, 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 of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies respondent Ward Baking Company as a New York corporation, with its office and principal place of business located at 475 Fifth Avenue, New York, N.Y.

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.

Respondent waives any further procedure before the hearing examiner and the Commission; the making of findings of fact and 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. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said

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order; and 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.

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the Agreement Containing Consent Order to Cease and Desist; finds that the Commission has jurisdiction over the respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondent Ward Baking Company, a corporation, directly or through any corporate or other device, in or in connection with the sale of bread and bakery products 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 service 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 10th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Ward Baking Company, 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.

IN THE MATTER OF
H. S. STUTTMAN CO., ET AL.

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

Docket 7244. Complaint, Aug. 28, 1958—Decision, Feb. 10, 1959

Consent order requiring New York City sellers of the one-volume "Webster's Unified Dictionary and Encyclopedia" which drew its basic material from two older works, to cease representing falsely in advertising and on the title page that said "Dictionary" was a new publication, that all information therein was complete and up-to-date, and that it contained all the facts, features, and material of a giant dictionary and a multivolumed encyclopedia set; and requiring them to disclose clearly on the title page and in advertising the fact that the books were reprints or contained reprinted material when such was the case.

Mr. Charles W. O'Connell for the Commission.

Coudert Brothers by *Mr. Percy A. Shay*, of Washington, D.C., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 28, 1958, issued and subsequently served its complaint in this proceeding against respondents H. S. Stuttman Co., a corporation existing and doing business under and by virtue of the laws of the State of New York, Harry S. Stuttman, Burton Stuttman and Martin Stuttman, individually and as president, secretary and vice president-treasurer, respectively, of the corporate respondent.

On December 16, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents H. S. Stuttman Co. and Harry S. Stuttman and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive 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.