

Decision

IN THE MATTER OF
THE GUMMED INDUSTRIES ASSOCIATION, INC., ET AL.

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

Docket 7079. Complaint, Mar. 3, 1958—Decision, Mar. 7, 1959

Order dismissing without prejudice as to respondent Minnesota Mining and Manufacturing Company, the complaint charging suppression of competition in the manufacture and distribution of flat gummed paper.

On Oct. 3, 1958, the Commission adopted a consent order disposing of the matter as to all other respondents, page 500 herein.

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

Connolly, Tucker, Post and Lyons, of St. Paul, Minn., by Mr. John L. Connolly, for Minnesota Mining and Manufacturing Company.

INITIAL DECISION DISMISSING COMPLAINT WITHOUT
PREJUDICE AS TO RESPONDENT MINNESOTA MINING
AND MANUFACTURING COMPANY BY
EARL J. KOLB, HEARING EXAMINER

This proceeding is now before the undersigned hearing examiner for final consideration upon the complaint, answer of respondent Minnesota Mining and Manufacturing Company thereto, stipulation as to the facts entered into upon the record between counsel supporting the complaint and said respondent Minnesota Mining and Manufacturing Company, and motion to dismiss and briefs in support thereof filed by said respondent Minnesota Mining and Manufacturing Company, answer to said motion filed by attorneys in support of the complaint, and reply brief filed by said respondent.

The hearing examiner has given consideration to said stipulation, motion to dismiss and briefs filed in support of and in operation thereto, and the record herein, and being now fully advised in the premises makes the following findings as to the facts, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

1. Respondent Minnesota Mining and Manufacturing Company is a corporation organized and existing under and by virtue

Findings

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of the laws of the State of Delaware with its office and principal place of business located at 900 Bush Avenue, St. Paul, Minn.

2. Mid-States Gummed Paper Company, hereinafter referred to as "Mid-States," was a Delaware corporation with offices and factory in Chicago and Bedford Park, Ill. On September 20, 1944, respondent Minnesota Mining and Manufacturing Company acquired all the capital stock of said Mid-States, and from September 20, 1944, to November 30, 1957, said Mid-States was operated as a wholly owned subsidiary of respondent Minnesota Mining and Manufacturing Company. On November 30, 1957, said Mid-States was dissolved as a corporation, and the business previously operated by said Mid-States has since December 2, 1957, been operated by respondent Minnesota Mining and Manufacturing Company as the Mid-States Gummed Paper Division of Minnesota Mining and Manufacturing Company.

3. The complaint in this proceeding charges that the respondents named in the caption hereof, acting by and through and with the assistance of the respondent the Gummed Industries Association, Inc., have entered into and maintained a combination, conspiracy and planned common course of action to hinder, lessen, restrict, or suppress competition among and between themselves and others in the manufacture and distribution of flat gummed paper.

4. Subsequent to the issuance of the complaint in this proceeding, all of the respondents named in the caption hereof, except Minnesota Mining and Manufacturing Company, a corporation, entered into an agreement containing a consent order to cease and desist, which agreement was accepted by the hearing examiner and initial decision was issued by him as to the respondents other than Minnesota Mining and Manufacturing Company, which initial decision was adopted by the Commission by its order issued October 3, 1958.

5. The participation of the Mid-States Gummed Paper Company in the acts and practices charged in the complaint is admitted by the respondent Minnesota Mining and Manufacturing Company in its stipulation entered into on the record in this proceeding. The motion to dismiss raises two issues:

(1) Whether the extent of control which the respondent Minnesota Mining and Manufacturing Company maintained over Mid-States was sufficient to hold it responsible for the acts and practices of Mid-States as charged in the complaint; and

(2) Whether or not there has been such a discontinuance of the practices alleged to warrant a dismissal in the public interest.

6. At the time of the acquisition of the capital stock of Mid-States Gummed Paper Company by the Minnesota Mining and Manufacturing Company, it was arranged that the operation of the Mid-States Gummed Paper Company continue as an independent company under the direction and supervision of the officers and personnel originally with the company. Certain directors of Minnesota Mining and Manufacturing Company were also directors of Mid-States at various times, but none of the officers or employees of Minnesota became officers of Mid-States, except that in the latter part of 1956 Waldo G. Bretson, Minnesota's plant manager at Bedford Park, Ill., also acted as manufacturing manager of Mid-States, and later, during the period May 29, 1957, up to November 30, 1957, was vice president and general manager of Mid-States.

7. It further appears from the stipulation and the exhibits made a part thereof that Minnesota Mining and Manufacturing Company at the time it dissolved Mid-States and made it a division of Minnesota did not adopt or maintain the prices and pricing practices of Mid-States, and that the Mid-States' prices and pricing systems were discontinued on November 30, 1957, several months prior to the issuance of the complaint in this proceeding.

CONCLUSIONS

1. Respondent Minnesota Mining and Manufacturing Company did not directly participate in, or commit, the unlawful acts charged in the complaint. All of the evidence in the record regarding the alleged unlawful acts pertains to Minnesota's former wholly owned subsidiary, Mid-States. When Minnesota dissolved Mid-States on November 30, 1957, and made it a division of Minnesota, it did not ratify the alleged unlawful acts and practices of Mid-States, but instead immediately discontinued the prices and pricing system previously followed by Mid-States.

2. The evidence in the record is not sufficient to support a finding that Minnesota Mining and Manufacturing Company, by reason of its relationship with its subsidiary, Mid-States, has violated the Federal Trade Commission Act as charged in the complaint. The record in this proceeding does not establish, by substantial evidence, that Minnesota maintained such complete

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control of its subsidiary, Mid-States, as to render Mid-States a mere tool of Minnesota and to compel the conclusion that the corporate entity of the subsidiary is a mere fiction. *National Lead Company v. Federal Trade Commission* (C.C.A. 7, 1955) 227 F. 2d 825, 829.

ORDER

It is therefore ordered, That the complaint be dismissed without prejudice as to respondent Minnesota Mining and Manufacturing Company.

DECISION OF THE COMMISSION

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of March 1959, become the decision of the Commission.

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IN THE MATTER OF
HARRY KRAUSS, ET AL., DOING BUSINESS AS
JOB LOT TRADING COMPANY

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

Docket 7300. Complaint, Nov. 14, 1958—Decision, Mar. 7, 1959

Consent order requiring New York City sellers to cease fictitious pricing in newspaper advertisements which represented that exaggerated prices set forth therein as "Reg." and "List" were the prices at which they customarily sold their merchandise.

Mr. Garland S. Ferguson supporting the complaint.

Mr. Irving Jay Greenspan, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

On November 14, 1958, the Federal Trade Commission issued a complaint charging that Harry Krauss and Sam Osman, individually and trading and doing business as Job Lot Trading Company, hereinafter referred to as respondents, had violated the provisions of the Federal Trade Commission Act by making false, misleading and deceptive statements and representations in the sale of their merchandise.

After issuance and service of the complaint, the respondents, their counsel and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the director and assistant director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice.

Respondents, pursuant to the aforesaid agreement, have admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been made duly in accordance with such allegations. Said agreement further provides that respondents waive all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance