

Complaint

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IN THE MATTER OF
MARKET FORGE COMPANY

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

Docket 7243. Complaint, Aug. 28, 1958—Decision, Mar. 27, 1959

Consent order requiring the largest manufacturer of auto luggage carriers in the United States, with main office in Everett, Mass., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as arbitrarily classifying customers as jobbers and distributors and thereby charging some competing retailers different prices; classifying some larger purchasers, but not all, as "Key Accounts" and quoting prices to them 5% lower than to distributors and making them other price reductions and freight allowances; and charging large chain store customers, classified as "National Chain Key Accounts," slightly less than they charged "Key Account" customers and making them more liberal freight allowances.

COMPLAINT

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

PARAGRAPH 1. Respondent Market Forge Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 25 Garvey Street, Everett, Mass.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of various types of equipment, including refrigeration equipment, commercial steam pressure cookers, hospital equipment, mop wringing equipment, and auto luggage carriers, to various wholesale and retail customers throughout the United States. The sale of auto luggage carriers represents a substantial part of respondent's annual sales of all products. The respondent has become the largest manufacturer of auto luggage carriers in the United States in the eight years since it began to manufacture said auto luggage carriers.

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PAR. 3. Respondent sells and distributes its auto luggage carriers principally through manufacturers' agents to jobbers or distributors and retailers.

In some cases the respondent sells its auto luggage carriers directly to large retailers and other key accounts.

In some cases the respondent sells to jobbers or distributors and retailers through its own salesmen.

PAR. 4. In the course and conduct of its business, as aforesaid, respondent is now and for the past several years has been continuously engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, in that it has sold and distributed its automobile luggage carriers and other products to wholesale and retail purchasers of the same located in the various States of the United States and the District of Columbia for use, consumption or resale within the United States and the District of Columbia, and the respondent causes said automobile luggage carriers and other products so sold to be shipped and transported from the Commonwealth of Massachusetts, where the respondent's place of business is located, to various other States of the United States wherein the aforesaid purchasers are located.

PAR. 5. In the course and conduct of its business in commerce, as described above, the respondent is now and for the past several years has been in substantial competition with other firms, partnerships and corporations engaged in the manufacture, sale and distribution of auto luggage carriers and other products in commerce between and among the various States of the United States or the District of Columbia.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent has discriminated in price between different purchasers of its auto luggage carriers and other products of like grade and quality by selling said products to some of its customers at higher prices than said products of like grade and quality are sold to other customers who are and have been in competition with the favored customers.

Some representative examples of respondent's pricing practices which constitute price discriminations are:

(a) Respondent circulates generally to prospective customers a price list which gives different prices for "jobbers" and "distributors." Theoretically, the "jobbers" are retailers and the "distributors" are wholesalers. The price differential is about 10% lower in favor of the distributors. However, neither classification has rigid standards and, in fact, many retailers are

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classified as distributors and thus pay the 10% lower price for auto luggage carriers. In some cases, competing retailers are placed in different classifications and thus purchase at different prices.

(b) In addition to the above-mentioned and generally known classifications, the respondent further classifies some customers as Key Accounts. Respondent does not circulate to the trade generally the information about the existence of this pricing classification.

The customers which are classified as key accounts may be either wholesalers or retailers and are generally the larger purchasers from the respondent, although a large volume of purchases does not guarantee that the respondent will place the purchaser in this classification.

Generally, the prices quoted to customers who are classified as key accounts are 5% below the prices quoted to "distributors." In some cases the prices to various key accounts are more or less than 5%. In addition to the 5% lower price, the key accounts receive certain other price reductions or allowances in order to pay freight or part of the freight from Boston to the locations of the purchaser.

In some cases key accounts are allowed extended billings.

(c) In addition to the above-mentioned classifications, some accounts are classified as National Chain Key Accounts. Information concerning this classification is not circulated generally to prospective or existing customers.

In general, the customers in this classification are large chain store customers.

The prices of auto luggage carriers sold to customers in National Chain Key Accounts are slightly less than prices of goods of like grade and quality sold key account customers.

The price to customers who are classified as National Chain Key Accounts varies within this classification from 10¢ to 25¢ per item.

In addition to the price differentials above-mentioned, more liberal freight allowances, or price reductions in lieu thereof, are granted to customers in this classification than to customers in any other classification.

PAR. 7. In many cases the customers who are in different classifications are in competition with one another and, in some cases, customers within a classification who purchase goods at varying prices are in competition with one another.

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PAR. 8. An effect of such discriminations in price, as alleged in paragraph 6, has been and is sufficient to divert substantial business from respondent's competitors to the respondent, and the effects of respondent's said discriminations in price may be substantially to lessen competition in the line of commerce in which respondent and its competitors are engaged. The pricing practices of the respondent also may tend to create a monopoly in the line of commerce in which respondent and its competitors are respectively engaged, or to injure, destroy or prevent competition with respondent.

Furthermore, the aforesaid discriminatory pricing practices of respondent may substantially lessen competition or tend toward monopoly in the respective lines of commerce in which the purchasers receiving the preferential prices are engaged, to the injury of those purchasers from the respondent who are in competition with said favored purchasers; and, furthermore, said discriminatory prices of the respondent tend to injure, destroy and prevent competition between and among the favored purchasers and other purchasers from the respondent.

PAR. 9. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

John T. Walker, Esq., for the Commission.

Melvin Richter, Esq., of Washington, D.C., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on August 28, 1958, charging it with having violated the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, by discriminating in the price of its auto luggage carriers and other products. Respondent appeared by counsel and entered into an agreement, dated January 26, 1959, containing a consent order to cease and desist, disposing of all the issues in this proceeding without further hearings, which agreement has been duly approved by the 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 §3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement, has admitted all of the jurisdictional allegations of the complaint and

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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 respondent waives 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 with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said 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, that said order to cease and desist 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, and that the complaint may be used in construing the terms of the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to §3.21 and §3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Market Forge Company is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal place of business located at 25 Garvey Street, Everett, Mass.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Market Forge Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in, or in con-

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nection with, the sale of auto luggage carriers, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling said products to any purchaser at net prices higher than said products of like grade and quality are sold to any other competing purchaser.

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 27th day of March 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Market Forge 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.

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IN THE MATTER OF
DAY'S TAILOR-D CLOTHING, INC.

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

Docket 7288. Complaint, Nov. 5, 1958—Decision, Mar. 27, 1959

Consent order requiring a distributor of men's and boys' sportswear and work clothes in Tacoma, Wash., to cease discriminating among its retailer customers by paying promotional allowances for cooperative advertising and furnishing storage and display racks to certain favored customers but not to their competitors and not to all competing cutomers on proportionally equal terms.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as respondent in the caption hereof, and hereinafter more particularly designated and described, 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, approved June 19, 1936 (Title 15, U.S.C. Sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent Day's Tailor-D Clothing, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 29th and Pacific Streets, Tacoma 1, Wash.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of men's and boys' sportswear, industrial uniforms and work clothing which it designs and manufactures or causes to be manufactured.

Respondent sells such products for resale to many customers such as department stores, men's specialty shops and clothing stores, which sell at retail from their places of business located throughout the western United States, Alaska and Hawaii, with major emphasis upon the Pacific Northwest area and the San Francisco-Oakland "Bay" area.

Respondent is a substantial factor in the sale of such products in said areas, with sales in excess of \$2,000,000.00 annually.