

Complaint

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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.

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Among its product lines are "Iron Duke" whipcord trousers and jackets, "College Cords" and "Klondike King" trousers, and "San Juan" slacks.

PAR. 3. Respondent, in the course and conduct of its business, is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having sold, distributed and transported, or caused the transportation of such products, from its place of business in the State of Washington to purchasers thereof located in other states of the United States and in other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its said business respondent has been, and is now, paying and contracting for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by and through such favored customers in connection with the sale or offering for sale of respondent's products. Said payments and contracts for payment to and for the benefit of such favored customers are not made available on proportionally equal terms by the respondent to all of its customers competing in the sale and distribution of said products.

PAR. 5. Among and included in the payments referred to in paragraph 4 hereof are credits or sums of money paid by respondent by way of allowances, rebates, or deductions, as compensation or in consideration for promotional services or facilities furnished by its customers in connection with the offering for sale or sale of respondent's products. These include payments or allowances for cooperative advertising which were made available to some but not all of respondent's customers competing in the resale of its products. In addition, among those competing customers who did receive such allowances from respondent, the allowances were frequently made available at varying times, on varying terms and in varying amounts.

PAR. 6. The aforesaid acts and practices of respondent as alleged in paragraph 1 through paragraph 5 hereof constitute violations of the provisions of subsection (d) of Section 2 of the Clayton Act (Title 15, U.S.C. Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

Count II

PAR. 7. Incorporated herein by reference are paragraph 1 through paragraph 3 of Count I of this complaint.

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PAR. 8. Respondent, for several years last past, has been discriminating in favor of some of its customers competing in the resale of its products by contracting to furnish or furnishing, or by contributing to the furnishing, of services or facilities connected with the handling, sale, or offering for sale, of its said products upon terms not accorded to all of its competing purchasers on proportionally equal terms.

PAR. 9. Among and included in the discriminations as referred to in paragraph 8 above is the furnishing by respondent of racks used for the storage and display of certain of respondent's products by retailers. Respondent has made such services and facilities available to some but not to all of its customers competing in the resale of its products. In addition, among those competing purchasers who did receive such services and facilities from respondent, they were furnished on varying nonproportional terms. For example, they were furnished at no cost to certain customers whereas other competing purchasers were required to contribute to the cost thereof.

PAR. 10. Also, among and included in the discriminations referred to in paragraph 8 above is the furnishing by respondent of billboard advertisements prominently displaying its name and products, and also featuring the name of certain of its purchasers who sell such products at retail. Respondent has made such services and facilities available to some but not to all of its customers competing in the resale of its products. In addition, among those competing purchasers who did receive such services and facilities from respondent, they were furnished on varying terms such as at no cost to certain customers whereas others were required to and did contribute to the cost thereof.

PAR. 11. The acts and practices of respondent, as alleged in paragraph 7 through paragraph 10 hereof constitute violations of the provisions of subsection (e) of Section 2 of the Clayton Act (Title 15, U.S.C. Sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936.

Mr. John J. McNally for the Commission.

Hodge, Mann & Peterson, by *Mr. Earl D. Mann*, of Tacoma, Wash., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

Count I of the complaint, issued herein by the Federal Trade Commission, charges respondent with violation of subsection (d)

of §2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, by paying and contracting for the payment of money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services and facilities furnished by and through such favored customers in connection with the sale or offering for sale of respondent's products including men's and boys' sportswear, industrial uniforms and work clothing. Count II of the complaint charges respondent with discriminating in favor of some of its customers competing in the resale of its said products by contracting to furnish or furnishing or contributing to the furnishing of services or facilities connected with the handling, sale or offering for sale of its said products upon terms not accorded to all of its competing customers on proportionately equal terms, in violation of subsection (e) of §2 of said Act.

On January 23, 1959, there was submitted to the undersigned hearing examiner of the Federal Trade 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 January 14, 1959, 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 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.

2. Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, §13), the Commission on November 5, 1958, issued its complaint in this proceeding against respondent and a true copy thereof was duly served on respondent.

3. Respondent admits all of 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.

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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," 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 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 respondent herein; that the complaint states a legal cause for complaint under §2 of the Clayton Act, as amended by the Robinson-Patman Act, 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:

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ORDER

It is ordered, That respondent Day's Tailor-D Clothing, Inc., a corporation, and its officers; and respondent's employees, agents and representatives, directly or through any corporate or other device, in, or in connection with, the sale of work clothes, sportswear, or any similar products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Making, or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or any service or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of products sold to him by respondent, or its successors and assigns, unless such payment is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

2. Contracting to furnish, or furnishing, or contributing to the furnishing of any services or facilities connected with the handling, sale, or offering for sale of any of respondent's said products to any purchaser from respondent, upon terms not accorded to all competing purchasers on proportionally equal terms.

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 Day's Tailor-D Clothing, 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.

IN THE MATTER OF
LOUIS MACKTEZ, INC., ET AL.

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

Docket 7293. Complaint, Nov. 5, 1958—Decision, Mar. 27, 1959

Consent order requiring a manufacturer in Millville, Mass., to cease violating the Wool Products Labeling Act by labeling woolen stocks falsely as "100% wool" and by failing in other respects to comply with the labeling requirements of the Act.

Mr. Garland S. Ferguson for the Commission.

Higgins & Silverstein, by *Mr. Sidney Silverstein*, of Woonsocket, R.I., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated November 5, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act and the Rules and Regulations made pursuant thereto.

On January 27, 1959, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Corporate respondent Louis Macktez, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Rhode Island, with its office and principal place of business located at Millville, Mass. Individual respondents Louis Macktez, Philip J. Macktez, and Lester A. Macktez are officers of said corporation. They formulate, direct and control the prac-