

Decision

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

Docket 7236. Complaint, Aug. 21, 1958—Order, Apr. 9, 1959

Order dismissing, following discontinuance in good faith of illegal practice before Commission investigation, complaint charging a large silverware manufacturer with granting discriminatory advertising allowances to favored customers.

Mr. William H. Smith and Mr. James R. Fruchterman for the Commission.

Shearman & Sterling & Wright, by Mr. Robert L. Clare, Jr., of New York, N.Y., for respondent.

INITIAL DECISION DISMISSING COMPLAINT
BY FRANK HIER, HEARING EXAMINER

On August 21, 1958, complaint in this proceeding was issued by the Commission charging violation of Section 2(d) of the Robinson-Patman amendment to the Clayton Act, alleging that respondent granted a special advertising allowance to one of its customers, Associated Barr Stores, Inc., of Philadelphia, Pa., a chain of retail jewelry outlets, for a special television promotion program and had paid substantial sums of money thereon during 1954, 1955, and 1956, and that this allowance was not granted on proportional or any other terms to any of respondent's other customers in that area.

Time was extended for answer, and on October 20, 1958, respondent moved to dismiss the complaint on the basis of voluntary discontinuance in good faith prior to any investigation or litigation activities. This motion was supported by an affidavit of the president in which it was admitted that the payments were made as alleged; that the allowance was discontinued by letter to Barr dated November 28, 1956, copy of which was attached; that no investigator called on respondent prior to September 9, 1957; that the special TV promotion program was a financial and commercial failure; that, in fact, the payments thereunder exceeded the sales; that the respondent had discontinued in June 1957 all advertising allowances of any kind or character; that the administration of any advertising program

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in its particular operation is not only cumbersome, but difficult; that it has no reason to renew or institute any further cooperative advertising allowance program, and will not do so.

At the hearing on the motion held this date, in response to questions from the undersigned hearing examiner, the following facts developed: That counsel in support of the complaint was unable to state that the files before the Commission at the time it issued the complaint, contained any of the facts relating to abandonment; that an investigator from the Federal Trade Commission did visit Associated Barr Stores, Inc., on October 10, 1956, but apparently on a general inquiry unrelated, at the time, to this respondent; that there is nothing to show that the respondent was apprised of any charge of illegality prior to September 9, 1957, as asserted; that counsel for the respondent admits all of the factual allegations in the complaint, and, having thus confessed, requests absolution or at least a dismissal of the complaint.

If the Commission had before it the facts relating to abandonment, this hearing examiner would feel that he had no discretion in the matter but to deny the motion. However, the contrary appears. He is unaware of any other Commission or other case involving this question of abandonment where the facts for dismissal are as strong as these. In most instances discontinuance has occurred after the filing of the complaint or after investigation has apprised the respective respondent that the legality of its practices is being questioned. However, if abandonment took place ten months before any such knowledge, under all these circumstances, above related, the motion should be and is granted. It is, therefore,

Ordered, That the complaint herein be, and the same hereby is, dismissed for good faith of abandonment with no reason to suspect or expect resumption or reinstitution of the practices charged and that, therefore, there is no public interest in further proceedings.

ORDER DENYING APPEAL AND ADOPTING
INITIAL DECISION DISMISSING COMPLAINT

This matter having been heard upon the appeal of counsel in support of the complaint from the hearing examiner's initial decision dismissing the complaint; and

The Commission having considered the entire record, including the briefs and oral argument of counsel in support of and in

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opposition to the appeal, and having concluded that the initial decision is correct and appropriate in all respects to dispose of this proceeding:

It is ordered, That the aforementioned appeal of counsel in support of the complaint be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision dismissing the complaint, filed October 31, 1958, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF
ST. REGIS PAPER COMPANY, ET AL.

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

Docket 6476. Complaint, Dec. 7, 1955—Decision, Apr. 11, 1959

Order dismissing without prejudice as to the two remaining respondents, complaint charging 21 leading paper bag manufacturers with using the same pricing formula to quote identical delivered prices to customers regardless of their location or freight costs.

On Feb. 12, 1959, the Commission approved a consent order requiring 17 of the manufacturers to discontinue said activities (p. 1162 herein) and in 1956 had dismissed the complaint as to two respondents who had ceased to manufacture the products concerned.

Mr. Andrew C. Goodhope, Mr. Ross D. Young, Jr., and Mr. John Perechinsky, supporting complaint.

Lamb & Long, by *Mr. George P. Lamb*, of Washington, D.C., for Fulton Bag and Cotton Mills; and *Kriesel, Lessall & Dowling*, of New York, N.Y., for Equitable Paper Bag Co.

Before *Mr. John Lewis*, hearing examiner.

INITIAL DECISION AS TO REMAINING RESPONDENTS
FULTON BAG AND COTTON MILLS
AND EQUITABLE PAPER BAG CO.

The Federal Trade Commission issued its complaint against the above-named respondents on December 7, 1955, charging them with the use of unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to hinder, lessen, restrict and restrain competition in price in the sale and distribution of multi-wall paper shipping sacks. After being served with said complaint, respondents appeared by counsel and filed their separate answers thereto. Thereafter, by orders dated respectively, February 20, 1956, and November 9, 1956, the complaint herein was dismissed as to respondents Raymond Bag Company and Thomas Phillips Company on the ground, substantially, that said respondents had ceased engaging in the manufacture and sale of multi-wall paper shipping sacks. Subsequently the remaining respondents, except Fulton Bag and Cotton Mills, and Equitable Bag Co., entered into separate but identical agreements, dated