

Complaint

IN THE MATTER OF
SAV-A-STOP, INC., ET AL.

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

Docket 7317. Complaint, Nov. 26, 1958—Decision, May 19, 1959

Consent order requiring three associated corporations in Jacksonville, Fla., engaged in business as a "rack merchandiser" or wholesaler of drug proprietaries and toiletries such as health and beauty aids—installing display racks and selling primarily to independent and chain grocery stores in the States of Florida, Georgia, Alabama, South Carolina, and Tennessee—to cease discriminating in price by paying on all purchases of certain favored customers who were not required to carry their "Jay" household items, the 3% discount allowed on that line, and by requiring non-favored customers to carry the "Jay" items in order to receive the additional discount on their drug proprietaries.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and herein-after more particularly designated and described, have violated and are now violating the provisions of subsection (a) 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), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45) and it appearing to the Commission that a proceeding by it in respect thereof, would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

Count I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. The above named corporate respondents are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida with their offices and principal place of business located at 2202 Main Street, Jacksonville, Fla.

Respondents James V. Freeman, Benjamin E. Griffin, William Adams, Alexander H. Edwards, and Harold Smith are president, vice president, secretary, treasurer and comptroller respectively

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of said corporations. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondents herein named. Their address is the same as that of the corporate respondents.

PAR. 2. Respondent, Sav-A-Stop, Inc., is principally engaged in business as a "rack merchandiser" or wholesaler of drug proprietaries and toiletries, such as health and beauty aids.

Respondent, Jay Distributing Company, Inc., came under the control of Sav-A-Stop, Inc., in October 1956 and is a wholesaler of household appliances, kitchenware, stationery, and pet food and supplies.

Respondent, Sav-A-Stop of Tampa, Inc., is owned by Sav-A-Stop, Inc., and is a corporation organized in 1953 to handle sales of the parent corporation in central Florida and on the Gulf Coast. Ninety percent of its merchandise requirements are supplied by the parent corporation.

In addition, respondent, Sav-A-Stop, Inc., controls several other corporations, not herein named. Total sales for all corporations concerned average approximately four (4) million dollars annually, with respondent, Sav-A-Stop, Inc., accounting for the principal share of this amount. Respondents install display racks and sell primarily to independent and chain grocery stores in the States of Florida, Georgia, Alabama, South Carolina and Tennessee. Respondent in the sale of said merchandise has at all times revelant herein been and now is engaged in commerce among the several states of the United States.

PAR. 3. In the course and conduct of its business, the respondents have been and are now in substantial competition in the sale of said merchandise with other sellers of such products. In many areas respondents sell their products to two or more grocery stores who are in substantial competition each with the other in the resale of such merchandise.

PAR. 4. In the course and conduct of its business in commerce, the respondents have been and are now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some grocery stores at higher and less favorable prices than it sells them to other grocery stores who are competitively engaged each with the other in the resale of said products. One or more of the purchases involved in such discriminations were in commerce, and such commodities were sold for use, consumption, or resale within the United States or the District of Columbia.

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Respondents have effected said discriminations between and among their grocery store customers in the manner and by the methods hereinafter described.

In the course and conduct of its business in commerce, respondents initially were wholesalers of drug proprietaries and toiletries only. Upon gaining control of respondent, Jay Distributing Company, Inc., and in order to induce their customers to carry for resale the household items distributed by "Jay," respondent Sav-A-Stop, Inc. inaugurated a plan whereby they would provide an additional 3% discount on drug proprietaries and toiletries, if said customers also agreed to carry for resale the household items distributed by "Jay."

In many instances, respondents provided and are providing said additional discount to certain of their favored customers without requiring them to carry for resale the household items distributed by "Jay." At the same time, respondents are requiring their nonfavored customers to carry these items in order to receive the additional discount on respondent's drug proprietaries.

PAR. 5. The effect of respondents' discrimination in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between respondents and competing sellers of similar merchandise and between and among respondents' resale customers.

PAR. 6. The acts and practices of respondents as above alleged constitute a violation of 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.

Count II

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 7. Paragraphs 1 through 4 of Count I are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 8. In the course and conduct of its business, respondents, as an inducement to customers and prospective customers to discontinue handling household lines offered by respondents' competitors, and thereafter to handle for resale respondents' products, have engaged and are now engaging in the following practice:

Utilizing and placing into effect a sales program as described in paragraph 4 above, which grants an additional discount to

customers of respondents' on one line of merchandise if they agree to carry for resale another and totally unrelated line of merchandise.

PAR. 9. The aforesaid method, act and practice as alleged in paragraph 8, have had and now have the following capacity, tendency, purpose and effect:

(a) To induce customers of competitors of respondents' to discontinue purchasing, stocking and selling said competitors line of household, and other merchandise, and instead to purchase, this same merchandise from respondents;

(b) Unreasonably to injure, hinder, hamper and restrain competing wholesalers of said household lines.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, have the tendency and capacity to unfairly divert, and have unfairly diverted, trade to respondents from their competitors, and, in consequence thereof, injury has been done, and is now being done, by respondents to competition in commerce among and between the various States, and said acts and practices are all to the prejudice and injury of the public, and of respondents' competitors, and customers of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the meaning of the Federal Trade Commission Act.

Mr. Eugene Kaplan for the Commission.

Mr. W. H. Adams, III, of *Adams & Tjoflat*, Jacksonville, Fla., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On November 26, 1958, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, and Section 5 of the Federal Trade Commission Act.

On February 18, 1959, the respondents and their counsel entered into an agreement with counsel supporting the complaint for a consent order pursuant to Section 3.25(a) of the Rules of Practice of the Commission. The hearing examiner finds that the content of the agreement meets all the requirements of Section 3.25(b) of said rules.

Under the agreement, respondents admit the jurisdictional

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facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The agreement contains a recommendation that the complaint be dismissed as to respondent Harold Smith, which recommendation is based upon an affidavit attached to and made a part of the agreement wherein it is set forth that said respondent has had no part in the organization, management or policies of the respondent corporations since July 26, 1958.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding as to all parties, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. The above-named corporate respondents are corporations organized, existing and doing business under and by virtue of the laws of the State of Florida with their offices and principal place of business located at 2202 Main Street, Jacksonville, Fla.

Respondents Benjamin E. Griffin, Alexander H. Edwards, William Adams and James V. Freeman are president, vice president, secretary and director, respectively, of said corporations. The individual respondents formulate, direct and control the policies, acts and practices of the corporate respondents herein named. Their address is the same as that of the corporate respondents.

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

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ORDER

It is ordered, That respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., a Sav-A-Stop of Tampa, Inc., corporations, and their officers, and James V. Freeman, Benjamin E. Griffin, William Adams, and Alexander H. Edwards, individually and as officers and directors of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of drug proprietaries and toiletries, household appliances, or other products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of said products of like grade and quality where the respondents are competing with any other sellers of said products, or where favored customers are competing with other customers of the respondents.

It is further ordered, That respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., and Sav-A-Stop of Tampa, Inc., corporations, and their officers, and James V. Freeman, Benjamin E. Griffin, William Adams, and Alexander H. Edwards, individually and as officers and directors of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in or in connection with the course and conduct of their business of selling drug proprietaries and toiletries, household appliances, or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Granting or offering to grant to any customer any discount on housewares or health and beauty aids in consideration for the purchase of both of these lines of wares from respondents, or in any way tying the sale of housewares and the sales of health and beauty aids one to the other.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Harold Smith.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

The Commission having considered the initial decision of the hearing examiner wherein he accepted an agreement containing a consent order to cease and desist executed on behalf of corporate respondents Sav-A-Stop, Inc., Jay Distributing Company, Inc., and Sav-A-Stop of Tampa, Inc., and by respondents Ben-

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jamin E. Griffin, Alexander H. Edwards, William Adams, and James V. Freeman, individually and as officers and directors of said corporations, by respondents' counsel and by counsel in support of the complaint, service of which initial decision was completed on April 16, 1959; and

It appearing that the initial decision may be deficient in that it fails to incorporate the substance of certain pertinent provisions of the agreement of the parties:

It is ordered, That said initial decision be, and it hereby is, amended by inserting between the second and third paragraphs thereof the following paragraph:

Under the agreement, respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

It is further ordered, That the initial decision as so modified shall on the 19th day of May 1959, become the decision of the Commission.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

IN THE MATTER OF
RICHARD GURNEY ET AL.
TRADING AS PIONEER BUSINESS SERVICE

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

Docket 7341. Complaint, Dec. 29, 1958—Decision, May 19, 1959

Consent order requiring a Council Bluffs, Iowa, real estate firm to cease making deceptive claims, in advertising and by their agents, to induce owners to list properties for sale with them and to increase their asking prices, thus assuring larger advance fees, by such representations as in the order below set forth.

Mr. John W. Brookfield, Jr. and Mr. Berryman Davis for the Commission.

Mr. Don H. Jackson and Mr. Robert C. Heithof, of Council Bluffs, Ia., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 29, 1958, the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 5, 1959, the respondents and their attorneys entered into an agreement with counsel in support of the complaint for a consent order.

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of §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 disposi-