

Complaint

56 F.T.C.

IN THE MATTER OF
PRESSMAN TOY CORP.

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

Docket 7067. Complaint, Feb. 20, 1958—Decision, Aug. 1, 1959

Consent order requiring a toy manufacturer in New York City to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by such practices as giving an organization of toy jobbers and wholesalers a special rebate of 2% which was not granted to its competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Pressman Toy Corp., more particularly designated and described hereinafter, has violated the provisions of Section 2(a) 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 Pressman Toy Corp., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 1107 Broadway, New York 10, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of toys throughout the United States. It operates a factory in Brooklyn, New York, and employs its own sales force, selling to jobbers, combination jobbers and retailers, department stores and chain stores. Its annual volume of sales is approximately \$3,000,000 to \$4,000,000.

PAR. 3. Respondent, in the course and conduct of its said business, is engaged in commerce, as "commerce" is defined in the Clayton Act, in that it sells and distributes toys to purchasers thereof located in states other than the state of origin of shipment and causes such products to be shipped and transported from its place of business to purchasers located in other states and in the District of Columbia, and there is now and has been a constant course and flow of trade and commerce in such products between respondent and said purchasers and respondent is therefore subject to the jurisdiction of the Federal Trade Commission.

PAR. 4. In the course and conduct of its said business, respondent has been and is now in competition with other corporations, partnerships and individuals in the manufacture, sale and distribution in commerce of toys, except as such competition has been substan-

tially lessened by the pricing practices of respondent hereinafter alleged.

Some of respondent's purchasers are in competition with each other and with purchasers of competitors of respondent in the purchase and resale of toys.

PAR. 5. Respondent, either directly or indirectly, has been and is now discriminating in price between different purchasers of its toys by selling such products to some purchasers at substantially higher prices than it sells such products of like grade and quality to other purchasers, some of whom are in competition with the less favored purchasers in the resale of such products.

For example, since 1954 said respondent has granted a rebate in price of 2% off list price to some purchasers of its toys of like grade and quality but not to others, which results in higher prices being paid by those purchasers who do not receive the benefit of such rebate than are paid by those purchasers who do receive the benefit of such rebate. Some of the favored purchasers compete with the unfavored purchasers in the resale of such products.

The purchasers of respondent's toys who have received preferential prices by way of rebate are members of a corporation known as March of Toys, Inc., whose membership is composed of a group of toy jobbers and wholesalers. It is to the members of this corporation, March of Toys, Inc., that said respondent has granted a preferential price by means of the above described rebate.

PAR. 6. The discriminations in price on the part of respondent being substantial, it is alleged that the effect thereof may be substantially to lessen competition and to tend to create a monopoly in the respective lines of commerce in which respondent and the purchasers receiving the preferential prices are engaged, and to tend to prevent, injure and destroy competition between respondent and its competitors and between and among purchasers of such toys from respondent.

PAR. 7. 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.

Mr. L. F. Depro and Mr. J. Garfinkel for the Commission.

Davis & Heffner, of New York, N.Y., and *Heffner, Block & Block*, by *Mr. Benjamin Heffner*, of New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 20, 1958, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Order

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On May 14, 1959, the respondent and his attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondent admits 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 respondent 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 respondent that it has violated the law as alleged in the complaint.

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. Respondent Pressman Toy Corp. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1107 Broadway, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Pressman Toy Corp., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of toys in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling such toys of like grade and quality to any purchaser at prices higher than those granted any other purchaser:

- (1) Where such other purchaser competes in fact with the unfavored purchaser in the resale and distribution of such products, or
- (2) Where respondent in the sale of such products is in competition with any other seller.

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 did, on the 1st day of August, 1959, become the decision of the Commission: and, accordingly:

It is ordered That the respondent herein shall, within sixty (60)