

sion 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
GENERAL MILLS, INC.

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

Docket 6926. Complaint, Oct. 31, 1957—Decision, Sept. 10, 1959

Consent order requiring an important producer and distributor of flour and grain products, chemicals, household sponges, and related products, with gross sales in 1956 exceeding 516 million dollars, to cease violating Sec. 2(d) of the Clayton Act by making payments for promotion and advertising to some purchasers of its "O-Cel-O" plastic sponges but not to their competitors, through such practices as paying a chain of supermarkets for in-store promotional displays and for advertising on the chain's electric "spectacular" sign in Times Square, and making payments to another chain for advertising of its anniversary sale.

Count II of the complaint charging respondent with entering into illegal exclusive-dealing contracts with the supermarket chain was dismissed on Sept. 19, 1959, page 320, herein.

COMPLAINT

The Federal Trade Commission, having reason to believe that General Mills, Inc., a corporation, has violated the provisions of Section 2, Subsection (d), and Section 3 of the Clayton Act, as amended (15 U.S.C., Sections 13 and 14), hereby issues its complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. General Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. It is now, and for many years has been, engaged in the production and sale of flour and other grain products, feeds, soybean products, chemicals, household sponges and related products. Its principal office is at 400 Second Avenue South, Minneapolis, Minnesota. (It may be referred to hereinafter as General Mills or respondent.) The gross annual sales volume of General Mills in fiscal 1956 was \$516,053,000.

PAR. 2. General Mills engages in the manufacture, distribution and sale of cellulose and polyurethane (plastic) sponges through its O-Cel-O Division (hereinafter referred to as O-Cel-O). O-Cel-O,

formerly an independent New York corporation, was acquired by General Mills and established as an integrated division of that corporation in 1952. O-Cel-O has its principal office and plant at 1200 Niagara Street, Buffalo, New York, and a sponge manufacturing plant in Tonawanda, New York. Through O-Cel-O, General Mills sells its sponges to customers with places of business located throughout the several states of the United States and in the District of Columbia for resale in the United States to consumers. Among these customers are retail grocery chains, supermarkets and independent retail grocery stores. Sales through the O-Cel-O Division are substantial, amounting to more than \$5,000,000 in fiscal 1956.

PAR. 3. General Mills, through O-Cel-O and otherwise, is now, and for many years has been engaged in commerce as that term is defined in the Clayton Act. It transports or causes to be transported its products from the state of manufacture to customers located in other states of the United States and in the District of Columbia, as well as in the state of manufacture. There is, and has been, a constant stream of trade and commerce in these products among the various states and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce during the past three years, General Mills, through O-Cel-O, has contracted to pay, and has paid, money, goods or other things of value to or for the benefit of certain of its customers. It has made these payments as compensation or in consideration for services or facilities furnished by or through these customers in connection with the sale or offering for sale of products manufactured, sold or offered for sale by General Mills through O-Cel-O. But such payments or consideration have not been available on proportionally equal terms to all other customers competing in the sale and distribution of such products.

PAR. 5. Among and typical of the discriminations alleged in Paragraph 4 are transactions between O-Cel-O Division of General Mills and The Grand Union Company. Grand Union operates a chain of supermarkets and retail food stores in New York, New Jersey, Pennsylvania, Vermont and other states. General Mills, through O-Cel-O, has paid to or for the benefit of Grand Union, directly or indirectly, substantial sums of money for services and facilities furnished it by or through Grand Union in the form of advertising of O-Cel-O sponges on an illuminated "spectacular" animated sign leased and controlled by Grand Union at 46th Street and Broadway, New York City, and in the form of in-store promotional displays.

PAR. 6. Other instances of the discriminations alleged in Paragraph 4 include a payment to Food Fair Stores, Philadelphia, Penn-

sylvania, on or about June 9, 1955, for advertising and promotion of Food Fair's anniversary sale, and a payment to H. C. Bohack Company, Inc., Brooklyn, New York, on or about June 16, 1955, as a promotional and display allowance.

PAR. 7. In the transactions described in Paragraphs 5 and 6, the payments were made and the services and facilities furnished in connection with the handling, sale and offering for sale of O-Cel-O sponges. These payments were not available, however, on proportionally equal terms to all other customers competing in the distribution and sale of O-Cel-O sponges.

PAR. 8. The acts and practices of General Mills, Inc., as alleged in Count I of this complaint, are in violation of Subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. Section 13).

COUNT II

PARAGRAPHS 1 THROUGH 3: For its charges under paragraphs 1 through 3 of this Count II, the Commission relies upon the matters and things set out in paragraphs 1 through 3 of Count I to the same extent and as though they were set out in full herein, and paragraphs 1 through 3 of Count I are, therefore, incorporated herein by reference and made a part of the allegations of this Count.

PAR. 4. In the course and conduct of its business in commerce, as above described, General Mills, through O-Cel-O, is now, and for many years has been, in substantial competition with other corporations, persons, firms and partnerships in the sale and distribution of household sponges in commerce.

PAR. 5. In the course and conduct of its business in commerce, as above described, General Mills has made sales and contracts for the sale of its products and has fixed a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the purchaser shall not deal in similar products of a competitor or competitors.

PAR. 6. Among such sales and contracts of sale are transactions entered into between General Mills (O-Cel-O) and a large chain store organization, The Grand Union Company, whereby Grand Union agreed to refrain from handling or selling products of one or more competitors of General Mills.

PAR. 7. General Mills' sales of its products pursuant to the conditions, agreements and understandings described in paragraphs 5 and 6 above have been and are substantial. Competitors of General Mills have been and are now unable to make sales of their products to customers of General Mills which they could have made but for the

conditions, agreements and understandings described above in paragraphs 5 and 6.

PAR. 8. The effect of such sales and contracts of sale on such conditions, agreements or understandings may be substantially to lessen competition or to tend to create a monopoly in the line of commerce in which General Mills (through O-Cel-O) has been and is engaged.

PAR. 9. The acts and practices of General Mills, as alleged in Count II of this complaint, are in violation of Section 3 of the Clayton Act (15 U.S.C., Section 14).

Before: *John Lewis*, hearing examiner.

Mr. Donald R. Moore and *Mr. Charles J. Steele* supporting the complaint.

Mr. John Finn and *Mr. Edward K. Thode*, of Minneapolis, Minn., for respondent.

INITIAL DECISION AS TO COUNT I OF COMPLAINT

The Federal Trade Commission issued its complaint against the above-named respondent on October 31, 1957, charging it with having violated Section 2(d), as amended, and Section 3 of the Clayton Act. After being served with said complaint, respondent appeared by counsel and filed its answer thereto. Thereafter the parties entered into an agreement, dated June 5, 1958, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties, except as to Count II of the complaint. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, was submitted to the above-named hearing examiner for his consideration on July 17, 1959, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has, as to that part of the proceeding which is disposed of thereby, admitted all the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full

hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record on which this decision shall be based shall consist solely of the complaint and said agreement, and 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.

This proceeding having now come on for final consideration, as to that portion thereof other than Count II, on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the remaining allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent General Mills, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office in Wilmington, Delaware, and its executive office located at 9200 Wayzata Boulevard, in the Village of Golden Valley, State of Minnesota.

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 provisions of the Clayton Act.

ORDER

It is ordered, That respondent General Mills, Inc. a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale in commerce (as "commerce" is defined in the Clayton Act) of household sponges or related products do forthwith cease and desist from:

Paying or contracting to pay to or for the benefit of any customer of said respondent anything of value as compensation or in consideration for any advertising or for any promotional displays furnished by or through such customer in connection with the processing, handling, sale or offering for sale of respondent's products unless such payment or consideration is available on proportionally equal terms to all other customers of respondent competing in the distribution of such products or commodities.

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 as to Count I of the complaint shall, on the 10th day of September 1959, become the decision