

IN THE MATTER OF
WESTINGHOUSE ELECTRIC CORPORATION ET AL.

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

Docket 7150. Complaint, May 14, 1958—Decision, Oct. 13, 1959

Consent order requiring a major manufacturer of electrical appliances, among other products, to cease violating Sec. 2(a) of the Clayton Act by selling consumer goods to competing purchasers at such price differences as the following: Electric refrigerators up to 20%, electric laundermats up to 31.8%, electric ranges up to 22.2%, and electric clothes dryers up to 19.4% ;

and to cease violating Sec. 2(d) of the Clayton Act by making disproportionate payments to retailers for newspaper, television, and radio advertising under its "Co-operative Advertising Procedure," and also by paying to some retail customers but not to their competitors, allowances for newspaper advertising in excess of amounts authorized by said "Co-operative" plan and bearing no relation to the actual rates charged.

COMPLAINT

The Federal Trade Commission, having reason to believe that Westinghouse Electric Corporation and Westinghouse Electric Supply Company have violated and are now violating the provisions of sub-sections (a) and (d) of Section 2 of the Clayton Act (15 U.S.C.A., Section 13, as amended) hereby issues its complaint charging as follows:

COUNT I

PARAGRAPH 1. Respondent Westinghouse Electric Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 401 Liberty Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent Westinghouse Electric Supply Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at 40 Wall Street, New York 5, New York.

PAR. 3. Respondent Westinghouse Electric Supply Company is a wholly owned subsidiary of respondent Westinghouse Electric Corporation. For brevity the parent corporation will hereinafter be referred to as WELCO and the subsidiary as WESCO.

PAR. 4. Respondent WELCO is a major manufacturer in the United States of apparatus and general industrial products, defense products, and consumer products. Included among respondent WELCO's consumer products are electric appliances which it manufactures at its factories located at Mansfield, Newark, and Columbus, Ohio, and East Springfield, Massachusetts, and television and home radio receivers manufactured at its factories located at Sunbury, Pennsylvania, and Metuchen, New Jersey.

Included among such electric appliances are electric ranges, refrigerators, laundermat automatic washing machines, dishwashers, water heaters, clothes dryers, domestic and commercial refrigerator units, waste-away units, fans, and vacuum cleaners.

PAR. 5. Respondent WESCO is engaged in the business of selling the consumer products manufactured by respondent WELCO and to some extent by other manufacturers. In the furtherance of its sales

activities respondent WESCO maintains 124 branch offices and warehouses located in principal cities throughout the United States. Said respondent's sales of electric appliances which it acquires from respondent WELCO and other manufacturers for the most part are made to retail dealers who resell to consumers.

The sales and other activities of respondent WESCO, including the acts and practices hereinafter to be alleged were and under the direction, supervision, and control of respondent WELCO; and both said corporations are jointly and severally named as respondents herein.

PAR. 6. In the course and conduct of their business respondents WELCO and WESCO are now and for many years have been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondents ship or cause to be shipped and transported their consumer products in a constant current of commerce from the state or states where such products are manufactured, or are temporarily stored in anticipation of sale and shipment, to purchasers located in other states and in the District of Columbia for use, consumption, or resale therein.

PAR. 7. In the course and conduct of their business in commerce respondents have discriminated in price in the sale of consumer products by selling such products of like grade and quality at different prices to different and competing purchasers.

Included among such sales at discriminatory prices are those which respondents made to retail dealers in which respondents charged substantially higher prices for electric appliances than was charged by respondents to other competing retail dealer-purchasers for such products of like grade and quality.

Instances of such discriminatory practices during the year 1956 are as follows: Respondents' price differences in the sale of electric refrigerators, Model TFJ-115, to different and competing retailer-purchasers amounted to as much as 20% of the price to the least favored competing purchaser.

Respondents' electric laundermats, Model L-9, were sold by respondents to different and competing retailer-purchasers at price differences amounting to as much as 31.8% of the price to the least favored competing purchaser.

Respondents' electric ranges, Model EJ, were sold by respondents to different and competing retailer-purchasers at price differences amounting to as much as 22.2% of the price to the least favored competing purchaser.

Respondents' electric clothes dryers, Model D-8-M, were sold by respondents to different and competing retailer-purchasers at price

differences amounting to as much as 19.4% of the price to the least favored competing purchaser.

PAR. 8. The effect of said discriminations in price by respondents in the sale of consumer products including electric appliances has been or may be substantially to lessen, injure, destroy, or prevent competition between respondents' retailer-purchasers paying such higher prices and their favored retailer competitors paying such lower prices.

PAR. 9. The discriminations in price as herein alleged are in violation of the provisions of sub-section (a) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 10. Paragraphs 1 through 6 of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted herein verbatim.

PAR. 11. In the course and conduct of their business in commerce, respondents have paid or contracted for the payment of money, goods, or other things of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondents' consumer products, including electric appliances, television and home radio receivers; and respondents have not made or contracted to make such payments, allowances, or considerations available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Respondents have executed, carried out, and put into effect discriminatory and disproportionate advertising practices in a variety of ways. The following are instances of such practices:

With respect to the advertisement by retailers of respondents' electric appliances during the year 1956, and subsequently, respondents had in effect a purported "Co-operative Advertising Procedure" with respect to the advertisement of respondents' "major appliances." Under said procedure respondents authorized payments to retailers for the advertisement of their electric appliances to the extent of 50% of the amounts approved by respondents for the advertisement of such products up to 11¼% of the suggested list price of such merchandise purchased by the retailer. Such authorizations included newspaper, television, and radio advertising, but not such charges as art work, type setting, writing service, layout, etc., in connection with newspaper advertisements. Respondents' said "Co-operative Advertising Procedure" contemplated the advertisement by

retailers of other products offered for sale and sold by respondents, including television and home radio receivers upon the basis of their pro rata share of the total cost of the advertisement.

Newspaper, radio, and television advertising placed by retail dealers is in some instances approved by respondents, and respondents' share of such advertising is computed, in certain instances, on the basis of national rates and, in other instances, upon local rates. This procedure, in many instances, results in disproportional payments by respondents for advertising between competing retail customers.

Respondents also pay advertising allowances to some of their retail customers based upon charges made by such customers for lineage or space per column inch in newspapers which are greater than, and have no relation to, actual rates or charges made by newspapers for the lineage or space used, while not making such payments available on proportionally equal terms to all other competing retail customers. Such payments by respondents in some instances substantially assist said favored retailers in defraying the expenses of their advertisement departments. In some instances the cost to respondents of advertising placed in newspapers is 75% or more of the total cost and is in excess of amounts authorized by respondents' "Co-operative Advertising Procedure" and accorded to other competing customers.

PAR. 12. The acts and practices as alleged in Paragraph Eleven herein are in violation of sub-section (d) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. William H. Smith and Mr. James R. Fruchterman supporting the complaint.

Cravath, Swaine & Moore, of New York City, for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On May 14, 1958, the Federal Trade Commission issued a complaint charging Westinghouse Electric Corporation, a corporation (hereinafter referred to as WELCO) and Westinghouse Electric Supply Company, a corporation, (hereinafter referred to as WESCO) with having violated the provisions of Sub-sections (a) and (d) of Section 2 of the Clayton Act (15 U.S.C.A. Section 13), as amended by the Robinson-Patman Act.

After issuance and service of the complaint respondent WELCO, its counsel and counsel supporting the complaint entered into an agreement for a consent order. In said agreement it is recommended that the complaint be dismissed as to respondent WESCO. The agreement disposes of the matters complained about and the agree-

ment has been approved by the Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondent WELCO admits all 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, except insofar as such facts relate to respondent WESCO, which was liquidated as of March 31, 1958, pursuant to a plan of liquidation providing, among other things, for the transfer of its assets and properties to and the assumption of its debts and liabilities, if any, by respondent WELCO. The complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said 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 record herein shall consist solely of the complaint and the agreement; respondent WELCO waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent WELCO waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified or set aside in the manner provided by statute for other orders; respondent WELCO waives any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent WELCO that it has violated the law as alleged in the complaint.

The undersigned hearing examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent Westinghouse Electric Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office located at 401 Liberty Avenue, Pittsburgh, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, and of respondent WELCO. The complaint states a cause of action against respondent WELCO under the Clayton Act, as amended by the Robinson-Patman Act.

Decision

56 F.T.C.

ORDER

It is ordered, That Westinghouse Electric Corporation, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of major home appliances, consisting of refrigerators, freezers, dehumidifiers, room air conditioners, ranges, water heaters, laundry equipment, dishwashers, food waste disposers, and accessories and renewal parts therefor, in commerce, as "commerce" is defined in the Clayton Act (U.S.C. Title 15, Section 13), as amended, cease and desist from:

(1) Discriminating, directly or indirectly, in the price of major home appliances of like grade and quality by selling major home appliances to any purchaser at net prices which are higher than the net prices charged to other purchasers competing in fact in the resale or distribution of such appliances.

(2) 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 other services or facilities furnished by or through such customer in connection with the handling, resale, or offering for resale of respondent's major home appliances unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in fact in the resale or distribution of such appliances.

It is further ordered, That the complaint herein, in so far as it relates to respondent Westinghouse Electric Supply Company be, and it hereby is dismissed.

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 13th day of October, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That Westinghouse Electric Corporation, 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.

Decision

IN THE MATTER OF
BELTONE HEARING AID COMPANY ET AL.

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

Docket 7359. Complaint, Jan. 14, 1959—Decision, Oct. 15, 1959

Consent order requiring Chicago manufacturers of hearing aids to cease representing falsely in advertising that their "Hear-N-See" and "Slimette" hearing aid devices have no attached buttons, wires, or cords, were invisible, and were hidden in eyeglasses; that their "Invisible" hearing aid was completely hidden when worn and therefore was invisible, and was their own invention; and that their advertising booklet was offered as a valuable public service to the hard of hearing.

Mr. Morton Nesmith and Mr. Kent P. Kratz for the Commission. Crowell & Leibman, Mr. Robert E. Mason, Jr. of Counsel, of Chicago, Ill., for respondents.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

On January 14, 1959, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising and sale of hearing aids, which come within the classification of devices, as the term "device" is defined in the Federal Trade Commission Act. Among said devices are those designated as "Hear-N-See," "Slimette" and "Invisible." On August 17, 1959, respondents Beltone Hearing Aid Company, a corporation, by its duly authorized officer, and Sam F. Posen, and Fannie Posen, individually and as officers of said corporation, and their attorney and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

It is set out in the agreement that David H. Barnow is not an officer of the corporation and owns only a very small amount of its stock, and the said agreement contains a recommendation that the complaint be dismissed as to this individual respondent. These facts and additional facts disassociating David H. Barnow from the activities and affairs of the corporate respondent are set out in an affidavit executed by Sam F. Posen, President, Beltone Hearing Aid Company, which is attached to and made a part of the agreement. The term "respondents," as hereinafter used, does not include David H. Barnow.