

IN THE MATTER OF
BURLINGTON INDUSTRIES, INC.

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

Docket 7493. Complaint, May 15, 1959—Decision, Mar. 22, 1960

Consent order requiring a Greensboro, N.C., manufacturer of hosiery and other textile products, with some 17 manufacturing plants located in various states, to cease making discriminatory allowances to favored retail customers not made to their competitors, by such practices as deducting up to .94¢ a dozen on some 1,700 dozen pairs of nylon hose sold to a retail chain in the Portland, Ore., area as its contribution to a coupon book promotion run by the chain.

Complaint

56 F.T.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent named above has violated and is now violating Section 2(d) of the amended Clayton Act (15 U.S.C. Section 13), hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal offices and place of business located in Greensboro, North Carolina.

PAR. 2. Respondent is principally engaged in the manufacture, distribution and sale of textiles, including branded and unbranded men's, women's and children's hosiery of all types, and more specifically including women's nylon hosiery. Respondent's total annual volume of sales for the year ending December 31, 1958, was in excess of \$650,000,000.

PAR. 3. These products are sold by respondent for use, consumption, and resale within the United States, and respondent ships or causes them to be shipped and transported from the state of location of its manufacturing plants to customers located in states other than the state wherein the shipment or transportation originated.

PAR. 4. Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act in such products, among and between the States of the United States.

With respect to the manufacture and sale of hosiery, respondent maintains and operates some 17 manufacturing plants located in North Carolina, Tennessee, Virginia, Alabama, Florida, and California. From these plants it ships and sells throughout the United States to various wholesalers and retailers.

PAR. 5. In the course and conduct of its business in commerce, respondent is competitively engaged with other corporations, individuals, partnerships and firms in the manufacture, distribution, offering for sale, and sale of its products, including hosiery.

PAR. 6. In the course and conduct of its business in commerce, respondent has been paying advertising and promotional allowances to certain favored customers without making the allowances available on proportionally equal terms to all other customers competing in the distribution and sale of its products.

For example, respondent, through its hosiery division, Burlington Hosiery Co., has participated in the periodic promotion plans of Fred Meyer, Inc., of Portland, Oregon, occurring annually for many years. In 1957, respondent, in the method and manner stated, sold approximately 1700 dozen pairs of nylon hose at \$6.75 and \$7.50 a

dozen pair, less deductions of as much as 94 cents per dozen pair as an allowance representing respondent's contribution to the Fred Meyer, Inc., coupon book promotion.

Such allowances were not offered or made available on proportionally equal terms by respondent to other customers competing in the resale of respondent's products of like grade and quality with those customers receiving the allowances.

PAR. 7. The acts and practices of respondent as alleged violate Section 2(d) of the amended Clayton Act (15 U.S.C., Section 13).

Mr. Franklin A. Snyder for the Commission.

Corcoran, Youngman and Rowe, of Washington, D.C., by
Mr. James H. Rowe, Jr., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued May 15, 1959, charges respondent Burlington Industries, Inc., a corporation, located at Greensboro, North Carolina, with violation of Section 2(d) of the Clayton Act, as amended, in connection with the manufacture, distribution and sale of textiles, including branded and unbranded men's, women's and children's hosiery of all types, and more specifically including women's nylon hosiery.

After the issuance of the complaint, respondent entered into an agreement containing consent order to cease and desist with counsel in support of the complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Associate Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

By the terms of said agreement, the respondent admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the respondent expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondent further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and issues the following order:

ORDER

It is ordered. That respondent Burlington Industries, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the sale of hosiery products, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying, or contracting for the payment of, anything of value to or for the benefit of any customer of respondent as compensation, or in consideration for, any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal terms to all other customers competing in the resale of such products with the favored customer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order entered March 3, 1960, having extended until further order the date on which the hearing examiner's initial decision herein otherwise would have become the decision of the Commission; and

It now appearing that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered. That the hearing examiner's initial decision, filed January 20, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered. That the respondent, Burlington Indus-

TRANS-OCEAN IMPORT CO., INC., ET AL.

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