

the order to cease and desist.

IN THE MATTER OF
HECKETHORN MANUFACTURING & SUPPLY COMPANY

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

Docket 7499. Complaint, May 21, 1959—Decision, Apr. 14, 1960

Consent order requiring manufacturers in Dyersburg, Tenn., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act, by selling its automotive shock absorbers, seat cushions and other products to some purchasers at lower prices than to their competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C.A. Title 15, Section 13) as amended, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. The Heckethorn Manufacturing & Supply Com-

pany, hereinafter called respondent, is a corporation organized and existing under and by virtue of the laws of the State of Colorado, with its principal office and place of business located in Dyersburg, Tennessee. Its mailing address is P.O. Box 117, Dyersburg, Tennessee.

PAR. 2. Respondent is engaged in the business of manufacturing, selling, and distributing automobile shock absorbers and seat cushions and other products. Respondent's sales of shock absorbers are largely made by its Columbus Shock Absorber Division to various purchasers for use, consumption or resale within the United States. A substantial volume of such products are sold and distributed by manufacturer's representatives throughout the United States.

In addition, respondent exports a substantial volume of its products.

PAR. 3. In the course of its business, as aforesaid, respondent is now, and for several years last past has been, continuously engaged in commerce, as "commerce" is defined in the Clayton Act, in that respondent has sold and distributed its automotive shock absorbers, seat cushions and other products, from its plant in Tennessee to various wholesale and retail buyers located in various other states of the United States and the District of Columbia.

PAR. 4. In the course of conducting its business in commerce, respondent has been and is now in substantial competition with other individuals, corporations and firms engaged in the business of manufacturing, selling and distributing comparable automotive shock absorbers, seat cushions and other products in commerce between and among the various states of the United States and the District of Columbia.

PAR. 5. In the course of conducting its business in commerce, respondent has sold its automotive shock absorbers, cushions and other products to various purchasers who competed, directly or indirectly, each with the other.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent has, directly or indirectly, discriminated in price between different purchasers of its automotive shock absorbers, seat cushions and other products, by selling said products to some of its purchasers at lower prices than such products of like grade and quality were sold at or near the same time to other purchasers, some of whom were in active competition with the aforesaid favored purchasers.

PAR. 7. The effect of respondent's discriminations in price between the different purchasers of its automotive shock absorbers, seat cushions and other products of like grade and quality, as hereinabove

described, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition among and between said favored and unfavored purchasers, or with customers of either of them.

PAR. 8. The aforesaid acts and practices of the respondent constitute violations 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.

Mr. John T. Walker and *Mr. James H. Kelley* for the Commission.

Ewell and Ewell, of Dyersburg, Tenn., and *Mr. James A. Horton*, of Washington, D.C., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated May 21, 1959, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On February 1, 1960, the respondent and its attorneys 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 complaint insofar as concerns the allegation of "primary line injury," namely, a substantial lessening of competition and tendency toward monopoly in the line of commerce in which the respondent is engaged should be dismissed on the grounds that the evidence in the light of subsequent developments is insufficient to substantiate that allegation.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposi-

tion 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 Heckethorn Manufacturing & Supply Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at Highway No. 20, Dyersburg, Tennessee (erroneously listed in the complaint as P.O. Box 117, Dyersburg, Tennessee).

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Heckethorn Manufacturing & Supply Company, 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 automotive shock absorbers, seat cushions and other automotive parts and accessories in commerce, as commerce is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any one purchaser at net prices lower than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the lower price in the resale or distribution of respondent's products.

It is further ordered, That the allegation of a substantial lessening of competition or tendency toward monopoly in the line of commerce in which the respondent is engaged be 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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein 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.

Complaint

56 F.T.C.

IN THE MATTER OF

MARLUN MANUFACTURING COMPANY, INC., ET AL.

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

Docket 7516. Complaint, June 10, 1959—Decision, Apr. 14, 1960

Consent order requiring the manufacturer of its "Black Angus" electric broiler rotisseries in Woodside, Long Island, N.Y., to cease discriminating in price by making promotional payments to certain wholesalers but not to all their competitors on proportionally equal terms; and to cease representing falsely in brochures, price lists and catalogue sheets distributed to dealer-customers and in newspaper and magazine advertising, that the excessive prices set forth were their customary retail prices.

COMPLAINT

The Federal Trade Commission, having reason to believe that Marlun Manufacturing Company, Inc., a corporation, Emanuel Sado and Maurice Sado, individually and as officers of said corporation, hereinafter referred to as respondents, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act and the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in those respects as follows:

COUNT I

PARAGRAPH 1. Respondent Marlun Manufacturing Company, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York. Respondents Emanuel Sado and Maurice Sado are president and secretary-treasurer, respectively, of the corporate respondent. They formulate, direct, and control the policies, acts, and practices of the corporate respondent and are responsible for the acts and practices herein alleged to be unlawful. The business address of all respondents is 60-06 37th Avenue, Woodside 77, Long Island, New York.

PAR. 2. For a number of years respondent corporation has been, and now is, manufacturing and selling a line of electric broiler-rotisseries under the brand name of "Black Angus." It sells directly to some retailers and also to many independent wholesalers which resell such products to retailers.

PAR. 3. Respondent corporation is now, and for many years past has been engaged in commerce as defined in the Federal Trade Com-