

IN THE MATTER OF
FIELDCREST MILLS, INC.

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

Docket 7528. Complaint, June 26, 1959—Decision, Apr. 27, 1960

Consent order requiring a large manufacturer of rugs, carpets, and "domestics" in Spray, N.C.—with sales in 1958 of over \$62,000,000—to cease violating Secs. 2(d) and (e) of the Clayton Act by granting advertising allowances to favored customers on more generous terms than it offered their competitors, making payments therefor in varying amounts up to 100%; and by furnishing only favored customers with a "Fieldcrest Shop" and providing for training their sales personnel.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent in the caption hereof, and hereinafter more particularly described, has violated and is now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act, as amended, (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent, Fieldcrest Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Spray, North Carolina.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale, and distribution of blankets, bedspreads, sheets, pillow cases, and other items known as "domestics," as well as rugs and carpets. Respondent sells its products to a large number of customers located throughout the United States, including retailers, distributors, jobbers, mail order and premium houses, and chain stores.

All sales of respondent's "domestics" products are made through respondent's Fieldcrest Division, and all sales of respondent's rugs and carpets are made through respondent's Karastan Division. Respondent's sales of its products are substantial, amounting in the year 1958 to over \$62,000,000.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent sells and causes its products to be transported from the respondent's principal place of business, located in North Carolina, to customers located in other states of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across state lines between said respondent and the buyers of such products.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other cus-

tomers competing in the sale and distribution of respondent's products.

PAR. 5. As illustrative of such practices respondent has:

(1) paid advertising or other allowances to some customers based on different contract terms than allowances paid to competing customers, but did not offer or accord or make available such allowances to all competing customers on proportionally equal terms;

(2) paid advertising or other allowances to some customers not in accordance with the terms set forth in the customers' signed contracts, thus favoring said customers, but did not offer or otherwise accord or make available such allowances to all competing customers on proportionally equal terms;

(3) paid advertising or other allowances to some customers which were determined by individual negotiations by or between respondent and such customers but did not offer or otherwise accord or make available such allowances to all competing customers in equal amounts, or proportionally equal by any other test;

(4) paid advertising or other allowances in varying amounts up to 100% to some customers but did not offer or otherwise accord or make available such allowances to all competing customers in equal amounts, or proportionally equal by any other test.

PAR. 6. The acts and practices of respondent as alleged above are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT II

PAR. 7. Paragraphs 1 through 3 of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 8. In the course and conduct of its business in commerce, respondent has discriminated in favor of many of its purchasers buying its commodities by contracting to furnish, or furnishing, or by contributing to the furnishing, of such favored competing purchasers, services or facilities connected with the handling, sale, or offering for sale of such commodities so purchased upon terms not accorded to other competing purchasers on proportionally equal terms.

As illustrative of such practices, respondent has furnished certain of its customers with a "Fieldcrest Shop," and also has provided for the training of sales personnel of such favored customers, while not according such services and facilities to all other competing purchasers on proportionally equal terms.

PAR. 9. The acts and practices of respondent as alleged herein are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Cecil G. Miles and Mr. John Perechinsky for the Commission. Lovejoy, Morris, Wasson & Huppuch, of New York, N.Y., for respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 26, 1959, the Federal Trade Commission issued its complaint against the above-named respondent, charging it with violating subsections (d) and (e) of section 2 of the Clayton Act, as amended, in connection with the manufacture, sale, and distribution of blankets, bedspreads, sheets, pillow cases, and other items known as "domestics," as well as rugs and carpets.

On January 29, 1960, the respondent 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.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and 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 said agreement meets all the requirements of section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Fieldcrest Mills, Inc. is a corporation organized,

existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Spray, North Carolina.

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 subsections (d) and (e) of section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Fieldcrest Mills, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products sold under any of its trademarks, trade names, or labels in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. 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 advertising, or promotional activities, or other services or facilities furnished by or through such customer in connection with the handling, offering for sale, or sale or distribution of any product or products of respondent, unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or sale of such product or products.

2. Furnishing, contracting to furnish, or contributing to the furnishing of any fixtures, display facilities, training programs or other services or facilities in connection with the handling, processing, sale or offering for sale of any product or products of respondent to any purchaser from respondent of such product or products bought for resale, unless such fixtures, display facilities, training programs, or other services or facilities are offered or otherwise made available on proportionally equal terms to all other purchasers from respondent who resell such product or products in competition with such purchasers who receive such fixtures, display facilities, training programs, or other services or facilities.

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 27th day of April, 1960, become the decision of the Commission; and, accordingly:



VELON SERVICE, INC., ET AL.

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