

Complaint

56 F.T.C.

IN THE MATTER OF

ELMER CANDY COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a)
OF THE CLAYTON ACT*Docket 7678. Complaint, Dec. 3, 1959—Decision, May 27, 1960*

Consent order requiring a New Orleans candy manufacturer to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by selling its products to some purchasers at higher prices than it sold to their competitors; for example, granting 10% and 20% price discounts to certain drugstores but none to competing drugstores, some of which sold more of its products than those favored.

COMPLAINT

The Federal Trade Commission, having reason to believe that Elmer Candy Company, Inc., hereinafter referred to as "respondent" and more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business at 540 Magazine Street, New Orleans, Louisiana.

PAR. 2. Respondent is engaged in the business of manufacturing and selling candy and related products. Respondent's total sales for the fiscal year ending August 31, 1958, were approximately \$2,500,000.00.

PAR. 3. Respondent has for several years last past maintained and operated, and still maintains and operates, a plant in New Orleans, Louisiana, at which are manufactured the aforesaid products.

PAR. 4. These products were, and are, sold by respondent for use, consumption, or resale within the United States, and when so sold respondent either ships or causes said products to be shipped and transported from the State of Louisiana to purchasers thereof located in other states of the United States, including the State of Mississippi. Respondent has maintained for the last several years, and still does maintain, a course of trade in commerce in said products, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 5. In the course and conduct of its business in such commerce, as aforescribed, respondent has for many years last past, and more particularly since 1958, been discriminating in price between purchasers of its products by selling such products to some of its purchasers at higher prices than it sells such products of like grade and quality to other purchasers. Some of such favored purchasers are engaged competitively with less favored purchasers in the resale of respondent's products.

For example, respondent has granted a 10% price discount to Grant Drug Store and none to Kimbrough & Quint, a competing customer in the Biloxi trade area. In Gulfport, Mississippi, respondent has granted a price discount of 10% to Brumfield Drug Store and none to Hover Drug Store, although the latter purchased slightly more of the respondent's products than the former in 1958, and was a competing customer in the resale of such products. In Jackson, Mississippi, the respondent granted a 20% price discount to the Walgreen Drug Store, and none to the Brent Drug Store, a competing customer in the Jackson trade area. In Meridian, Mississippi, respondent granted a 10% price discount to the Post Office Drug Store and none to the Rayner Drug & Paint Store, although the latter purchased more than twice the volume of the former in 1958 and competed in the resale of respondent's products.

PAR. 6. In the course and conduct of its business in commerce respondent has been, and is, competitively engaged with other corporations, individuals, partnerships and firms in the manufacture, distribution and sale of, and in attempting to sell, its products.

PAR. 7. The effect of the aforesaid discriminations, or any appreciable part thereof, has been or may be to substantially lessen competition, or tend to create a monopoly, in the lines of commerce in which the respondent and its purchasers are engaged, and to injure, destroy or prevent competition, with respondent and with those of its customers who receive the benefit of said discriminations.

PAR. 8. The aforesaid acts and practices of respondent as hereinbefore alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Section 13).

Mr. Franklin A. Snyder for the Commission.

Coe, Nowalsky and Lambert, of New Orleans, La., by *Mr. A. Miles Coe*, for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondent with price discrimination in violation of the Robinson-Patman Act. An agree-

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ment has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified, or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the 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.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Elmer Candy Company, Inc., is a corporation existing and doing business under the laws of the State of Louisiana, with its office and principal place of business located at 540 Magazine Street, New Orleans, Louisiana.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered. That respondent Elmer Candy Company, 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 candy and related products of like grade and quality in commerce, as "commerce" is defined in the amended 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 purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes in the resale and distribution of the respondent's products with the purchaser paying the higher price.

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Decision

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 May, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the 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