

Complaint

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IN THE MATTER OF
BYER-ROLNICK HAT CORPORATION

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

Docket 7837. Complaint, Mar. 21, 1960—Decision, Aug. 18, 1960

Consent order requiring the third largest hat manufacturer in the industry, with main office and manufacturing facilities in Texas, to cease discriminating in price between competing purchasers in violation of Sec. 2(a) of the Clayton Act by means of annual cumulative quantity discounts ranging from one to five percent which penalized smaller buyers unable to reach the volume required and which had increased competitive effect in that chain or multiple-store purchasers were permitted to combine the purchase volumes of their various outlets so as to qualify for the higher discount allowed on the aggregate total.

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 and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Byer-Rolnick Hat Corporation, formerly known as Resistol Hats, Inc., 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 in the City of Garland, State of Texas.

PAR. 2. Respondent is engaged in the manufacture, sale, and distribution of hats. Among the various well-known brands of hats manufactured and sold by respondent are Resistol, Kevin McAndrew, Churchill, Bradford, and Luxureze. Respondent is a substantial factor in the hat industry, ranking as the third largest company in the industry, with a sales volume in excess of \$5,950,000 for the fiscal year ending March 31, 1959. The principal manufacturing facilities of respondent are located in the State of Texas.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its hats when sold for resale, to be shipped from its manufacturing facilities in the aforesaid State to purchasers thereof located in various other States of the United States and maintains and at all times mentioned

herein has maintained a substantial course of trade in said hats in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its hats of like grade and quality, by selling of said products at higher and less favorable net purchase prices to some purchasers, than the same are sold to other purchasers who have been and are in competition with the nonfavored purchasers.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices.

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the amount of the customer's annual purchases of Resistol and Kevin McAndrew brand hats for the fiscal year ending March 31 of each year as follows:

<i>Annual Purchases</i>	<i>Discount (percent)</i>
Up to \$2,499.....	0
\$2,500 to \$5,000.....	1
\$5,001 to \$10,000.....	1½
\$10,001 to \$15,000.....	2
\$15,001 to \$20,000.....	2½
\$20,001 to \$35,000.....	3
\$35,001 to \$50,000.....	4
\$50,001 and over.....	5

Respondent's aforescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of \$2,500, for example, receive no volume discounts on their purchase and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedule to chain or multiple-store purchasers. Respondent allows such purchasers to combine the purchase volumes of their various outlets so as to qualify for the higher discount allowed on the larger aggregate total of such purchase volume. In many instances the separate purchase volumes of these different individual stores are not sufficient to warrant such higher discount, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all such outlets, each individual store is allowed this higher discount.

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In many instances respondent's other customers are purchasing individually from respondent in considerably greater volume than the individual chain or multiple-store with whom they compete, and in so doing receive either no discount or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain or multiple-store is allowed the larger discount not related to its actual individual purchase volume. The products sold under respondent's different product lines are of like grade and quality in its respective product lines, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain and multiple-store customers. In many instances all the aforesaid stores are located in the same city or metropolitan area and all such stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative price discriminations occasioned between and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during the fiscal year ending March 31, 1959, are as follows in but two sample areas:

Detroit Trade Area

Customer	Purchase volume	Rebate	Rebate
			Percent
Harry Suffrin: ¹			
Store 1, Detroit.....	\$20,764.16		
Store 2, Detroit.....	13,990.25		
Store 3, Detroit.....	8,712.00		
	\$43,466.41	\$1,738.66	4.00
Van Horns, Inc.: ²			
Store 1, Detroit.....	4,884.42		
Store 2, Detroit.....	318.50		
Store 3, Royal Oak.....	458.50		
Store 4, Harper Woods.....	651.00		
	6,312.42	94.69	1.50
Danbys Store for Men: ³			
Store 1, Detroit.....	1,671.25		
Store 2, Detroit.....	162.00		
Store 3, Birmingham.....	2,683.58		
	4,516.83	45.17	1.00
Morey Scholnick.....	4,188.00	41.88	1.00
Le Clair (formerly Culver Reame Best).....	2,472.50		.00
E. J. Hickey.....	2,016.75		.00
Dearborn Toggery.....	1,852.00		.00
Carlisle Men's Wear.....	939.75		.00
Blocks Clothes.....	315.00		.00

¹ Under respondent's schedule Store 1 would receive 3%; Store 2, 2%; Store 3, 1½%. All stores received 4%.

² Under respondent's schedule Store 1 would receive 1%; Stores 2, 3, 4, no rebate. All stores received 1½%.

³ Under respondent's schedule Store 3 would receive 1%; Stores 1, 2, no rebate. All stores received 1%.

Oklahoma City Trade Area

Customer	Purchase volume	Rebate	Rebate
			<i>Percent</i>
May Bros.....	\$12,984.64	\$259.69	2.00
Sturms.....	10,032.74	200.65	2.00
Parks: ¹			
Store 1, Oklahoma City.....	2,399.75		
Store 2, Oklahoma City.....	1,163.25		
Store 3, Oklahoma City.....	782.25		
Store 4, Oklahoma City.....	601.50		
Store 5, Midwest City.....	463.75		
	5,410.50	81.16	1.50
Bundys Western Shop.....	4,351.63	43.52	1.00
Men's, Inc.....	3,166.50	31.66	1.00
Bonds, Inc. ²	385.00	3.85	1.00
Cutchalls.....	1,461.25		.00
Frontier City Western Store.....	1,384.50		.00

¹ Under respondent's schedule Stores 1, 2, 3, 4, 5, would receive no rebate. All 5 stores received 1½%.

² The Bonds, Inc. Oklahoma City Store purchase volume of \$385.00 was combined with the following 6 Bonds Stores: 1. Houston, Texas, \$1,260.75; 2. Houston, Texas, \$838.25; 3. Dallas, Texas, \$686.00; 4. Dallas, Texas, \$364.00; 5. Mesquite, Texas, \$271.83; 6. Fort Worth, Texas, \$342.42. None of these 7 stores would have individually qualified for any discount under respondent's schedule.

PAR. 6. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforesaid, 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 with said respondent or said favored purchasers.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

Mr. Eldon P. Schrup for the Commission.

Johnson, Bromberg, Leeds & Riggs, by *Mr. Otis B. Gary*, of Dallas, Tex., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated March 21, 1960, the respondent is charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On May 30, 1960, the respondent and its attorney, 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

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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 it concerns the allegation of "primary line injury" namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with said respondent, should be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegation.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition 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, Byer-Rolnick Hat Corporation, formerly known as Resistol Hats, Inc., 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 in the City of Garland, State of Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Byer-Rolnick Hat Corporation, 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 hats or related items in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of any such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondent's products.

It is further ordered, That the allegation in the complaint to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with said respondent, 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 18th day of August 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