

MARCH OF TOYS, INC., ET AL.

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

Docket 7070. Complaint, Feb. 20, 1958—Decision, Aug. 26, 1960

Consent order requiring an association and its member toy wholesalers in various States to cease violating Sec. 2(f) of the Clayton Act by knowingly

inducing or accepting unlawful price discriminations from suppliers, and, in determining a "net price", to take into account discounts, rebates, etc., by which net prices are effected.

COMPLAINT

Pursuant to the provisions of the Clayton Act, as amended by the Robinson-Patman Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties named in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, (U.S.C. Title 15, Sec. 13) hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent March of Toys, Inc., hereinafter referred to as respondent MOT, is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 200 Fifth Avenue, New York 10, N.Y.

Respondent Henry Lang is an individual who is executive director and vice-president of respondent MOT, with his principal office and place of business located c/o March of Toys, Inc., 200 Fifth Avenue, New York 10, N.Y.

The hereinafter specifically named individual respondents are all officers or directors of respondent MOT:

Nathan Greenman,
85 Willis Avenue,
Mineola, Long Island,
New York, N.Y.
President and director.

John R. Olsen,
4639 Milwaukee Avenue,
Chicago 30, Ill.
Treasurer and director.

Albert Zamler,
2281 West Fort Street,
Detroit 16, Mich.
Director.

Samuel Dubin,
417 Market Street,
Philadelphia 6, Pa.
Director.

David Nesson,
Colonial at 22d Street,
Norfolk 10, Va.
Director.

S. S. Seidel, Sr.,
8th and O Streets,
Lincoln 1, Nebr.
Director.

Benjamin Shrager,
19 Terminal Way,
Pittsburgh 19, Pa.
Director.

A. L. Crowe,
P.O. Box 1859,
Louisville 1, Ky.
Director.

Leonard J. Brown,
109 Hopkins Place,
Baltimore 1, Md.
Executive vice president
and director.

Jerome G. Watson,
635 SW First Avenue,
Miami 32, Fla.
Secretary and director.

Complaint

57 F.T.C.

J. Bradbury Fellows,
51 High Street,
Boston 10, Mass.
Director.

Alexander Gottsegen,
741 Magazine Street,
New Orleans 12, La.
Director.

Alan J. Goldstein,
8 Jay Street,
Rochester 6, N.Y.
Director.

Michael G. Hersh,
1400 Folsom Street,
San Francisco 3, Calif.
Director.

J. Wasserman,
23 South 4th Street,
St. Louis 2, Mo.
Director.

Linden R. Thoreson,
2600 Canton Street,
Dallas 26, Tex.
Director.

The foregoing individual respondents direct, formulate and control the acts, practices and policies of MOT.

Respondent Baltimore Products Company is a corporation organized and existing under the laws of the State of Maryland, with its principal office and place of business located at 109 Hopkins Place, Baltimore 1, Md.

Respondents Albert Zamler and Abe Lapides are copartners, doing business under the firm name and style of Consolidated Athletic Supply Company, with their principal office and place of business located at 2281 West Fort Street, Detroit 16, Mich.

Respondents William H. Bernstein and Milton Miller are copartners, doing business under the firm name and style of Federal Wholesale Company, with their principal office and place of business located at 342 East 3d Street, Los Angeles 13, Calif.

Respondent Fellows and Company, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal office and place of business located at 51 High Street, Boston 10, Mass.

Respondent Samuel Dubin is an individual doing business under the name and style of General Novelty Company, with his principal office and place of business located at 417 Market Street, Philadelphia 6, Pa.

Respondent Gotham Industries, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 741 Magazine Street, New Orleans 12, La.

Respondent Greenman Brothers, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 85 Willis Avenue, Mineola, Long Island, N.Y.

Respondent Nesson Sales Company, Inc., is a corporation organized and existing under the laws of the State of Virginia, with its

principal office and place of business located at Colonial and 22d Street, Norfolk 10, Va.

Respondent Rochester Stationery Company, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 8 Jay Street, Rochester 6, N.Y.

Respondent Schwarz Paper Company is a corporation organized and existing under the laws of the State of Nebraska, with its principal office and place of business located at Eighth and O Streets, Lincoln 1, Nebr.

Respondent M. Seller Company, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 1400 Folsom Street, San Francisco 3, Calif.

Respondent Shrager Brothers Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located in the Terminal Building, 19 Terminal Way, Pittsburgh 10, Pa.

Respondent Singerman & Wasserman, Inc., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 23 South 4th Street, St. Louis 2, Mo.

Respondent Stratton & Terstegge Company, Inc., is a corporation organized and existing under the laws of the State of Kentucky, with its principal office and place of business located at Post Office Box 1859, Louisville 1, Ky.

Respondent Thebault-Olsen Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 4639 Milwaukee Avenue, Chicago 30, Ill.

Respondent Linden R. Thoreson is an individual doing business under the name and style of Thoreson Sales Company, with his principal office and place of business located at 2600 Canton Street, Dallas 26, Tex.

Respondent Watson-Triangle Company is a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 635 South West First Avenue, Miami 32, Fla.

PAR. 2. All of the respondents named in Paragraph One, with the exception of respondent Henry Lang, have been and are now members of respondent MOT. Respondent Lang has been and is now an officer and executive director of respondent MOT.

PAR. 3. Respondent MOT was organized as a corporation under the name of Parade of Toys, Inc., on June 19, 1950, under the laws

of the State of New York. On November 9, 1951, its name was changed to March of Toys, Inc. Said respondent is engaged in the business of producing and publishing annually a catalog of toys. Various manufacturers of toys are advertisers in the catalog and the respondent members of respondent MOT sell such catalogs to retail toy distributors throughout the United States. Respondent MOT is owned and controlled by respondent members by virtue of their ownership of capital stock in the said respondent. Each member appoints one of the members of the Board of Directors and control over the corporations affairs rests in the board of directors at the annual meetings and in between times in the executive committee appointed by the board and the executive director.

The duties of the executive director are to determine the kinds of toys that should be recommended to the Board of Directors for inclusion in the catalogs and to advise the members of any new items that may appear on the market. He also is authorized to act and he has so acted as resident buyer for various members, purchasing toys in quantities authorized by individual members.

PAR. 4. Respondents in the course and conduct of their said business are engaged in commerce, as "commerce" is defined in the Clayton Act, in that they publish or cause to be published, sell and distribute toy catalogs, and purchase toys for resale from vendors thereof, located in various States and cause such products so purchased to be shipped and transported from the States where vendors are located to destinations in other States and the District of Columbia, and there is now and has been a constant course and flow of trade and commerce in such products and respondents are therefore subject to the jurisdiction of the Federal Trade Commission.

PAR. 5. In the course of their said business in commerce, said respondents have been in competition with other corporations, partnerships and individuals in the sale and distribution of toy catalogs and in the purchase of toys from various vendors, and in the resale thereof said respondents have been and are now in competition with other distributors, wholesalers, jobbers and others, except to the extent that such competition has been lessened or eliminated by the methods, practices and policies of respondents described herein.

PAR. 6. Said respondents in the course of their business in commerce of purchasing toys for resale, have since 1954, knowingly induced or knowingly received discriminatory prices from various toy vendors which prices were lower than the prices paid to the same vendors for toys of like grade and quality by other purchasers competing with said respondents in the resale of such products.

Respondent MOT and respondent Lang have acted as an instrumentality or intermediary for the respondent members, individuals, partnerships and corporations in inducing the various vendors to grant concessions in price to the respondent members with purchases being made by the individual respondent members sometimes through respondent MOT or respondent Lang, and shipments being made by the toy vendors in each case, to the respective places of business of the respondent members. Negotiations leading up to the granting of preferential prices to said respondents are and have been conducted by and through the office of respondent MOT and usually are and have been executed by respondent Lang as the executive director of respondent MOT, on behalf of, with the knowledge and at the request of all the respondent members of said respondent MOT.

Among the transactions in which said respondents have knowingly induced or knowingly received discriminatory prices from their vendors are:

(1) purchases of toys from Pressman Toy Corporation, a toy manufacturer in New York City, at a special two percent rebate from purchase price, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor did not receive such rebate and were thereby required to and did pay higher prices for such products;

(2) purchases of toys from Fred Bronner Corporation, a toy importer in New York City, at an extra three percent discount, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor were thereby required to and did pay higher prices for such products;

(3) purchases of toys from Empire Plastic Corporation, a toy manufacturer in New York City, at an extra five percent discount, while at the same time other competing wholesalers who purchased toys of like grade and quality from the same vendor were thereby required to and did pay higher prices for such products.

PAR. 7. The effect of said discriminations in price, knowingly induced or received by respondents as herein alleged may be substantially to lessen competition with or tend to create a monopoly in said respondents in the line of commerce in which they are engaged, or to injure, destroy or prevent competition with respondent members or with their customers.

PAR. 8. The foregoing acts and practices of the respondents and each of them in knowingly inducing, or in knowingly receiving the aforesaid discriminations in price are in violation of the provisions

of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lewis F. Depro and Mr. Jerome Garfinkel for the Commission.
Greenbaum, Wolff & Ernst, by *Mr. Frederic S. Nathan*, of New York, N.Y., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 20, 1958, the respondents are charged with violating the provisions of subsection (f) of section 2 of the Clayton Act, as amended.

On October 26, 1959, the respondents, except those herein specifically set forth, and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit 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 respondents 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 respondents that they have 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 business of respondent Linden R. Thoreson, doing business under the name of Thoreson Sales Company, has been succeeded to since about September 9, 1958 and is being carried on by a legal successor, Thoreson Sales, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2600 Canton Street, Dallas, Tex. Respondent Thoreson Sales, Inc. consents to a waiver of service of a true copy of the said complaint and agrees that service of said complaint upon respondent Linden R. Thoreson, doing business as Thoreson Sales Company, shall have the same legal force and effect as though it were served upon the corporate respondent Thoreson Sales, Inc.: that respondent Thoreson Sales, Inc., shall be and is legally bound by the service of a true copy of said complaint upon respondent Linden R. Thoreson, doing business as Thoreson Sales Company, as though such a copy was served upon the corporation, Thoreson Sales, Inc., and that respondent Thoreson Sales, Inc., as the legal successor to Linden R. Thore-

son, doing business as Thoreson Sales Company, be made a party respondent in this cause and be fully and completely bound as a respondent to the order hereinafter set forth.

The agreement also provides that the complaint may be dismissed as to the four individual respondents J. Bradbury Fellows, Alan J. Goldstein, and William H. Bernstein and Milton Miller, doing business as Federal Wholesale Company, and one corporate respondent, Fellows and Company, Inc., as they did not receive any discounts or rebates as alleged in the complaint or participate in any plan to do so, nor did they benefit therefrom, either directly or indirectly, and neither did they have any knowledge of such acts or practices, at least until after such alleged discounts and rebates had been made. There being no evidence to the contrary, the complaint may be dismissed as to the four individual respondents and the one corporate respondent hereinbefore referred to in this paragraph.

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 March of Toys, Inc., sometimes herein referred to as respondent MOT, is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

Respondent Henry Lang is an individual and executive director and vice president of the respondent MOT, with his office and principal place of business located at 200 Fifth Avenue, in the city of New York, State of New York.

Respondent Nathan Greenman is an individual and director of respondent MOT, with his office and principal place of business located at 85 Willis Avenue, in the city of Mineola, Long Island, State of New York,

Respondent Leonard J. Brown is an individual and president and director of respondent MOT, with his office and principal place of business located at 109 Hopkins Place, in the city of Baltimore, State of Maryland.

Respondent John R. Olsen is an individual and treasurer and director of respondent MOT, with his office and principal place of business located at 4639 Milwaukee Avenue, in the city of Chicago, State of Illinois.

Respondent Jerome G. Watson is an individual and director of respondent MOT, with his office and principal place of business located at 3401 N.W. 73d Street, in the city of Miami, State of Florida.

Respondent Albert Zamler is an individual and director of respondent MOT and copartner with respondent Abe Lapidès, doing business as Consolidated Athletic Supply Company, with his office and principal place of business located at 2281 West Fort Street, in the city of Detroit, State of Michigan.

Respondent Samuel Dubin is an individual and director of respondent MOT, doing business as General Novelty Company, with his office and principal place of business located at 417 Market Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Alexander Gottsegen is an individual and director of respondent MOT, with his office and principal place of business located at 310 Howard Avenue, in the city of New Orleans, State of Louisiana.

Respondent David Nesson is an individual and secretary and director of respondent MOT, with his office and principal place of business located at Colonial and 22d Street, in the city of Norfolk, State of Virginia.

Respondent Michael G. Hersh is an individual who was a director of respondent MOT, with his office and principal place of business located at 1400 Folsom Street, in the city of San Francisco, State of California.

Respondent S. S. Seidel, Sr., is an individual and director of respondent MOT, with his office and principal place of business located at 8th and O Streets, in the city of Lincoln, State of Nebraska.

Respondent Benjamin Shrager is an individual who was a director of respondent MOT, with his office and principal place of business located at 19 Terminal Way, in the city of Pittsburgh, State of Pennsylvania.

Respondent J. Wasserman is an individual and director of respondent MOT, with his office and principal place of business, located at 23 South 4th Street, in the city of St. Louis, State of Missouri.

Respondent A. L. Crowe is an individual who was a director of respondent MOT, with his office and principal place of business located at Post Office Box 1859, in the city of Louisville, State of Kentucky.

Respondent Linden R. Thoreson is an individual and executive vice president and director of respondent MOT, with his office and

principal place of business located at 2600 Canton Street, in the city of Dallas, State of Teaxs.

Respondent Baltimore Products Company is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 109 Hopkins Place, in the city of Baltimore, State of Maryland.

Respondent Abe Lapides is an individual and copartner with respondent Albert Zamler doing business as Consolidated Athletic Supply Company, with his office and principal place of business located at 2281 West Fort Street, in the city of Detroit, State of Michigan.

Respondent Gotham Industries, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 310 Howard Avenue, in the city of New Orleans, State of Louisiana.

Respondent Greenman Brothers, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 85 Willis Avenue, in the city of Mineola, Long Island, State of New York.

Respondent Nesson Sales Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at Colonial and 22d Street, in the city of Norfolk, State of Virginia.

Respondent Rochester Stationery Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 Jay Street, in the city of Rochester, State of New York.

Respondent Schwarz Paper Company is a corporation existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 8th and O Streets, in the city of Lincoln, State of Nebraska.

Respondent M. Seller Company is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1400 Folsom Street, in the city of San Francisco, State of California.

Respondent Shrager Brothers Company is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 19 Terminal Way, in the city of Pittsburgh, State of Pennsylvania.

Respondent Singerman & Wasserman, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 23 South 4th Street, in the city of St. Louis, State of Missouri.

Order

57 F.T.C.

Respondent Stratton & Terstegge Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Kentucky, with its office and principal place of business located at Post Office Box 1859, in the city of Louisville, State of Kentucky.

Respondent Thebault-Olsen Company is a corporation 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 at 4639 Milwaukee Avenue, in the city of Chicago, State of Illinois.

Respondent Thoreson Sales, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Texas with its office and principal place of business located at 2600 Canton Street, in the city of Dallas, State of Texas.

Respondent Watson-Triangle Company is a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 3401 N.W. 73d Street, in the city of Miami, State of Florida.

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

ORDER

It is ordered, That respondent March of Toys, Inc., a corporation, and the following individual respondents. Henry Lang, Nathan Greenman, Leonard J. Brown, John R. Olsen, Jerome G. Watson, Albert Zamler, Samuel Dubin, Alexander Gottsegen, David Nesson, S. S. Seidel, Sr., Michael G. Hersh, Benjamin Shrager, J. Wasserman, A. L. Crowe, Linden R. Thoreson, and Abe Lapidès; and the following corporate respondents; Baltimore Products Company, Gotham Industries, Inc., Greenman Brothers, Inc., Nesson Sales Company, Inc., Rochester Stationery Company, Inc., Schwarz Paper Company, M. Seller Company, Shrager Brothers Company, Singerman & Wasserman, Inc., Stratton & Terstegge Company, Inc., Thebault-Olsen Company, Thoreson Sales, Inc., and Watson-Triangle Company; and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, in connection with the purchase of toys in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products, by directly or indirectly inducing, receiving, or accepting from any seller a net price known by the respective respondents to be below the net price at which said products of like grade and quality are being sold by such seller

to other customers, where respondents are competing with such other customers of the seller.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions, or other terms and conditions of sale by which net prices are effected.

It is ordered, That the complaint be dismissed as to individual respondents J. Bradbury Fellows, Alan J. Goldstein, William H. Bernstein and Milton Miller, and as to corporate respondent Fellows and Company, Inc.

FINAL ORDER

By its order of August 5, 1960, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed June 24, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That all of the respondents herein, except those as to whom the complaint has been dismissed, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.