

Complaint

57 F.T.C.

IN THE MATTER OF

ANNISTON FOUNDRY COMPANY

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

Docket 8031. Complaint, June 30, 1960—Decision, Oct. 19, 1960

Consent order requiring a manufacturer of cast iron soil pipe and fittings in Anniston, Ala., to cease discriminating among its customers in violation of Sec. 2(d) of the Clayton Act by making payments to some customers for promoting its products but not to all their competitors on proportionally equal terms, such as sums amounting to \$3,300 paid to the American Radiator and Standard Sanitary Corp. for promoting the sale of its products through television programs sponsored by the company in the trading areas of New Orleans, Pittsburgh, and elsewhere.

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 (d) 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:

PARAGRAPH 1. Respondent Anniston Foundry Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its principal office and place of business located at Anniston, Alabama.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of cast iron soil pipe and fittings.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding \$10,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, has caused and now causes its said products to be shipped and transported from the state or states of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the state or states wherein said shipment or transaction originated. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain 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 have not been offered or otherwise made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, between May 1957 and August 1959 respondent contracted to pay, and periodically did pay, sums amounting to \$3,300.00 to the American Radiator and Standard Sanitary Corporation for services and facilities furnished it by American Radiator and Standard Sanitary Corporation in promoting the sale of respondent's products through television programs sponsored by American Radiator and Standard Sanitary Corporation in the trading areas of New Orleans, Louisiana; Pittsburgh, Pennsylvania; and elsewhere. Such payments were not offered or otherwise made available on proportionally equal terms to all other customers competing with American Radiator and Standard Sanitary Corporation in the sale and distribution of products of like grade and quality purchased from respondent.

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

Mr. Martin F. Connor supporting the complaint.

Knox, Jones, Woolf & Merrill, by *Mr. Earle Jones*, of Anniston, Ala., for respondents.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint in this proceeding was issued on June 30, 1960, by the Federal Trade Commission. It charges respondent with violating subsection 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. The complaint charges that respondent, in selling its pipe, pipe fittings, and related products, and offering them for sale and distribution in interstate commerce, paid or contracted for the payment of something of value to or for the benefit of certain of its customers as compensation or in consideration for services or facilities furnished by or through such customers, and that such payments have not been offered or otherwise made available on proportionally equal terms to all other customers of respondents competing in the sale and distribution of its products. A true and correct copy of the complaint was served upon respondent as required by law. Thereafter respondent appeared by counsel and entered into an agreement dated August 5, 1960, which purports to

dispose of this proceeding as to all the parties and issues without the necessity of a formal hearing.

The said agreement has been signed by the respondent, its counsel, and by counsel supporting the complaint. It has been approved by the Director, and the Associate Director of the Bureau of Litigation of the Federal Trade Commission. On August 10, 1960, the said agreement was submitted to the undersigned hearing examiner for his consideration in accordance with Section 3.25 of this Commission's Rules of Practice for Adjudicative Proceedings. The agreement contains the form of a consent cease and desist order which the parties have agreed may be entered by the hearing examiner in order to dispose of the issues involved in this proceeding.

In and by said agreement, respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. In said agreement respondent waives (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all of the rights respondent may have to challenge or contest the validity of the order entered in accordance with said agreement.

This agreement of August 5, 1960, provides further that it shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; 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 agreement of August 5, 1960, provides further that the order to cease and desist provided for in said agreement may be entered in this proceeding by the Commission without further notice to respondent, and that, when so entered, such order shall have the same force and effect as if entered after a full hearing. The order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the order.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement of August 5, 1960, containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, the agreement of August 5, 1960, is hereby accepted and ordered filed at the same time that this decision becomes the decision of the

Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner having considered the agreement and proposed order, and being of the opinion that the acceptance thereof will be in the public interest, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent Anniston Foundry Company is a corporation existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business located in Anniston, Alabama;

3. Respondent is engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Robinson-Patman Act;

4. The complaint herein states a cause of action against respondent under the Clayton Act, as amended by the Robinson-Patman Act; and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondent, Anniston Foundry Company, 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 pipe, pipe fittings, and related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customers of respondent as compensation or in consideration for any services or facilities furnished by or through such customers in connection with the handling, offering for sale, sale or distribution of said products, unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers competing in the distribution of such products.

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 19th day of October 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 form in which it has complied with the order to cease and desist.

Decision

57 F.T.C.

IN THE MATTER OF

WILSON TRADING CORPORATION ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION AND THE WOOL PRODUCTS LABELING ACTS*Docket 6656. Complaint, Oct. 17, 1956—Decision, Oct. 20, 1960*

Order requiring distributors of yarn in New York City to cease violating the Wool Products Labeling Act by representing as 100% cashmere, on invoices and carton labels, cones of yarn which contained substantially less than 100% cashmere fibers; and by failing to label certain of said wool products to show the percentages of the total fiber weight, as required.

Mr. Berryman Davis and Mr. H. D. Stringer for the Commission.
Rubinton & Coleman, by *Mr. Theodore D. Ostrow* and *Mr. Noel Rubinton*, of Brooklyn 1, N.Y., for respondents.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint herein charges the respondents, Wilson Trading Corporation, a corporation, and Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of the respondent corporation, (a) with violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, by misbranding certain wool products in a manner which constitutes unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and (b) with making false, misleading and deceptive representations on invoices of wool products (yarns), which had the capacity and tendency (1) to mislead and deceive a substantial portion of the purchasers of said products into the erroneous and mistaken belief that such statements were true; (2) to cause such purchasers to misbrand the fabrics manufactured with said yarn as to their fiber content; and (3) to place in the hands of such purchasers the means and instrumentalities whereby they might mislead and deceive members of the purchasing public as to the character and amount of the constituent fibers in said products, all of the latter practices being in violation of the Federal Trade Commission Act.

All respondents were duly served with the aforesaid complaint according to law and, within the required time, filed answer thereto denying the pertinent charges and violation. By amended answer filed May 16, 1957, respondents assert, without conceding any impropriety in their prior activity, that since May 7, 1956, they had not sold or delivered any of the yarn referred to in the complaint; that on June 20, 1956, the Commission was given written assurance