

the initial decision of the hearing examiner did, on the 27th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Fame Records, Inc., a corporation, 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.

IN THE MATTER OF
CUTTER LABORATORIES

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

Docket 7840. Complaint, Mar. 21, 1960—Decision, Oct. 27, 1960

Consent order requiring manufacturers of human and veterinary biologicals and pharmaceuticals in Berkeley, Calif., to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act through classifying its customers into functional categories with results, as typical, that a low volume purchaser paid a higher net price than his high volume purchasing competitors in the same group, and all purchasers in one group received a 15% price advantage over competitors in another where both bought less than \$25 worth.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating Section 2(a) of the amended Clayton Act (U.S.C. Title 15, Section 13), hereby issues its complaint as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 4th and Parker Streets, Berkeley, California.

PAR. 2. Respondent is engaged in the manufacture, distribution and sale of human biologicals and pharmaceuticals, hospital solutions and specialty products, veterinary biologicals and pharmaceuticals, specialty veterinary products, and human blood products.

Respondent's total sales for the year 1958 were approximately \$18,745,000.

PAR. 3. These products are sold by respondent for use, consumption, or resale within the United States and respondent causes them

to be shipped and transported from the state of location of its principal place of business to purchasers located in states other than the state in which the shipment or transportation originated.

PAR. 4. Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act, in such products described among and between the states of the United States.

Respondent maintains and operates manufacturing plants at Berkeley, California, and Chattanooga, Tennessee, among others. From these plants it ships and sells throughout the United States to various purchasers located in the several states of the United States, including Washington, Oregon, Texas, Colorado, Illinois and New York.

PAR. 5. In the course and conduct of its business in commerce, respondent is discriminating in price between different purchasers of its products of like grade and quality by selling to some purchasers at higher and less favorable prices than it sells to other purchasers competitively engaged in the resale of its products with the non-favored purchasers or their purchasers.

For example, respondent's products are divided, generally, into two large groups: (1) human products only, and (2) veterinary products, including human products purchased by veterinary products customers. Within these two groups, respondent categorizes its purchasers according to function: i.e., Doctor (#14), pharmacy (#10), "service retailer" (#13), hospital clinic (#41), and others.

Since about June 1957, in the "human products" category, all #10 buyers are subject to a cumulative discount plan off the face of each invoice. Invoices totaling under \$25.00 receive no discount. Invoices totaling from \$25.00 to \$49.90 receive 7½ percent discount. Invoices of \$50.00 or more receive 15 percent discount. Thus, a low volume purchaser in the #10 group is subject to a higher net price than the competing high volume purchaser of the #10 group, who obtains the 15 percent discount on the basis of quantity purchases.

Further, all group #13 buyers, who are competitively engaged with the group #10 buyers in the distribution and resale of respondent's products, designated "service retailers" by the respondent, receive a straight 15 percent discount off the face of each invoice irrespective of the total volume, subject to the exception of a few products listed on respondent's price schedules. Thus, a group #13 buyer would receive a 15 percent discount off the face of an invoice totaling less than \$25.00 whereas a competing group #10 buyer purchasing the same volume would receive no discount.

Basically, the same categorization applies to the veterinary product line, which operates to the advantage of a high volume purchaser and to the disadvantage of the competing low volume purchaser.

PAR. 6. In the course and conduct of its business in commerce, respondent is competitively engaged with other corporations, individuals, partnerships and firms in the manufacture, distribution and sale of its products. Some of respondent's purchasers are competitively engaged with each other in the resale of respondent's products within the various trading areas in which they are engaged in business.

PAR. 7. The effect of respondent's discriminations in price, as alleged, may be substantially to lessen, injure, destroy or prevent such competition, as alleged, or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are engaged.

PAR. 8. The foregoing acts and practices of the respondent, as alleged, violate Section 2(a) of the amended Clayton Act (U.S.C. Title 15, Section 13).

Mr. Franklin A. Snyder supporting the complaint.

Morrison, Foerster, Holloway, Shuman & Clark by *Mr. Girman Peck* of San Francisco, Calif., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on March 21, 1960 charging that respondent had violated Section 2(a) of the amended Clayton Act by unlawfully discriminating in price among its customers in connection with the sale of its products, including human and animal biologicals and pharmaceuticals.

On August 24, 1960 there was submitted to the undersigned hearing examiner an agreement between respondent, its counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the 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 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 hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record 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. Cutter Laboratories was a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at Fourth and Parker Streets in the City of Berkeley, California.

2. Respondent Cutter Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at Fourth and Parker Streets, Berkeley, California.

3. Cutter Laboratories, a California corporation, was merged into and with Robert K. Cutter Company, a Delaware corporation, on May 10, 1960, and the name of the latter corporation was changed by the Agreement of Merger to Cutter Laboratories, Inc., a Delaware corporation.

4. Cutter Laboratories, Inc., is the legal successor to Cutter Laboratories and as such it has assumed all of the obligations and duties of Cutter Laboratories, including compliance with the Order to Cease and Desist contained herein.

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

ORDER

It is ordered, That respondent Cutter Laboratories, Inc., a corporation (the legal successor to Cutter Laboratories which was named as respondent in the original complaint), and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale of its products, including human and animal biologicals and pharmaceuticals, 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 one purchaser at net prices higher than the net price 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.

Complaint

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It is further ordered, That the allegation of a substantial lessening of competition or tendency toward monopoly in the line of commerce in which the respondent is engaged 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 27th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Cutter Laboratories, Inc., a corporation (the legal successor to Cutter Laboratories which was named as respondent in the original complaint) 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