

the initial decision of the hearing examiner shall, on the first day of December 1960, become the decision of the Commission; and, accordingly:

It is ordered. That respondent Kerr Glass Manufacturing Corporation, 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

KEITH M. MERRICK ET AL. DOING BUSINESS AS
KEITH M. MERRICK COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8110. Complaint, Aug. 30, 1960—Decision, Dec. 7, 1960

Consent order requiring Sibley, Iowa, printers of sympathy cards by processes which presented a raised-letter effect but which differed from engraving both as to materials used and results obtained, to cease using the word "engraved" in describing the cards by such terms as "Plateless Engraved" and "Dri-Engraved."

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Keith M. Merrick and Loren Fleming, individually and as copartners doing business as Keith M. Merrick Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Keith M. Merrick and Loren Fleming are copartners doing business under the name of Keith M. Merrick Company with their principal office and place of business in Sibley, Iowa.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the printing, among other things, of sympathy cards and in the sale and distribution thereof in commerce between

Complaint

57 F.T.C.

and among the various States of the United States. Respondents cause said cards, when sold, to be transported from their said place of business in the State of Iowa to the purchasers thereof, many of whom were and are located in States of the United States other than the State of Iowa. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cards in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business as described above, and for the purpose of inducing the purchase of their sympathy cards, respondents have printed and circulated to prospective customers throughout the several States sample sympathy cards containing, among other things, the statements, "Plateless Engraved" and "Dri-Engraved." The message portion of the sample cards upon which these statements appear is printed with lettering having a raised appearance.

PAR. 4. Respondents, through the use of the terms "Plateless Engraved" and "Dri-Engraved" represent that their sympathy cards are engraved, as that expression is used and understood by the public and the printing trade when applied to stationery products such as respondents' sympathy cards. The word "engraved," when used with, or descriptive of, stationery products, means, and the printing trade and the public understands it to mean, a stationery product which results from the application of the stationery, under pressure, to the surface of an intaglio or other plate into which letters, words or designs have been etched or otherwise cut below the surface of the plate, and where, as a result of the pressure applied, the surface of the stationery is forced into the lines cut into the plate surface causing the ink in such lines to adhere to the paper on which the impression is to be made, producing letters, words or designs which are raised from the general plane of the stationery surface, in relief.

PAR. 5. Said representations are false, misleading and deceptive. Respondents' cards were not engraved but were printed by processes which present a raised-letter effect, but which differ from engraving, both as to materials used and results obtained.

PAR. 6. Respondents are in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of cards of the same general nature as those sold by respondents.

PAR. 7. The use by respondents of the terms "Plateless Engraved" and "Dri-Engraved" had and has the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said sympathy cards were and are

1255

Decision

engraved and because of such erroneous and mistaken belief to purchase respondents' sympathy cards. As a result of said practices as aforesaid, trade in commerce has been, and is being, unfairly diverted to respondents from their competitors, and injury has thereby been done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Thomas A. Sterner for the Commission.

Mr. Donald E. Skiver, of Sibley, Ia., for respondents.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondents with violation of the Federal Trade Commission Act in connection with the distribution in commerce of sympathy cards which they have printed.

An agreement has now been entered into by respondents, their attorney and counsel supporting the complaint which provides, among other things, that respondents admit all the jurisdictional facts alleged 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 the agreement; that the making 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 this proceeding without further notice to the respondents and when entered shall have the same force and effect as if entered after a full hearing, respondents specifically waiving all the rights they may have to challenge or contest the validity of the order; that the order may be altered, modified or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it become a part of the decision of the Commission.

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:

Decision

57 F.T.C.

1. Respondents Keith M. Merrick and Loren Fleming are individuals and copartners doing business under the name of Keith M. Merrick Company with their office and principal place of business located in the City of Sibley, State of Iowa.

2. The Federal Trade Commission had jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That the respondents, Keith M. Merrick and Loren Fleming, individually and as copartners, doing business as Keith M. Merrick Company, or any other name, their representatives, agents and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale and distribution of sympathy cards or other stationery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "engraved" or any of its variations, either alone or in conjunction with any other word or words, to designate, describe or refer to stationery products unless the respondents produce the stationery products so designated, described, or referred to by a process which consists essentially in the application of the stationery, under pressure, to the surface of an intaglio or other plate into which letters, words or designs have been etched or otherwise cut below the surface of the plate, and where, as a result of the pressure applied, the surface of the stationery is forced into the lines cut into the plate surface causing the ink in such lines to adhere to the paper on which the impression is to be made, producing letters, words or designs which are raised from the general plane of the stationery surface, in relief.

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 7th day of December 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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.

Decision

IN THE MATTER OF

LEO L. LOWY TRADING AS AMERICAN BALL BEARING
COMPANY ET AL.

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

Docket 7565. Complaint, Aug. 7, 1959—Decision, Dec. 8, 1960

Order requiring a Brooklyn manufacturer of a complete line of precision ball and roller bearings under the trade name "ABC", to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by giving some customers greater discounts than others competing with them through its practice of charging individual jobbers 10% more than "distributors" and 20% more than members of buying groups it classified as "warehouse distributors".

Mr. Peter J. Dias and *Mr. Robert G. Cutler*, supporting the complaint.

Respondent *Leo L. Lowy*, for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents named in the above caption on August 7, 1959, charging violations of § 2(a) of the Clayton Act as amended, by discriminating in price between competing purchasers in the sale of automotive bearings for replacement purposes. On September 23, 1959, respondents filed an answer which denied making unlawful price discriminations. Thereafter hearings were held in New York, New York; Denver, Colorado; and Los Angeles, California. Testimony and other evidence was received from respondents Lowy and Parker, but respondents were not represented by counsel at the hearings. The respondents were represented by respondent Lowy at the New York hearings, but not at Denver or Los Angeles, where purchasers testified. Respondents did offer a document, which was received in evidence after the close of the reception of evidence in support of the complaint; and this document constitutes all the evidence offered by respondents in their defense.

Proposed findings, conclusions and proposed order were submitted by counsel supporting the complaint, but were not submitted by respondents.

The real issue in this matter is whether the sellers' price differentials may have any of the adverse effects proscribed by the statute.

Respondents contend that competition may not be adversely affected unless a price advantage to a buyer is reflected in the buyer's resale price, thus diverting business from non-favored buyers on the