
IN THE MATTER OF
THE GRAHAM COMPANY, INC.

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

Docket 7994. Complaint, June 24, 1960—Decision, Jan. 12, 1961

Consent order requiring a New York City distributor of dried peas and beans and other products, mainly under the trade name of "Redbow", to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act, by such practices as use of a quantity discount schedule, the maximum discounts of which were based upon quantities so large as to make them unavailable to many of its wholesaler-purchasers.

Complaint

58 F.T.C.

COMPLAINT

The Federal Trade Commission having reason to believe that The Graham Company, Inc., a corporation, hereinafter referred to as respondent, has violated and is now violating the provisions of Section 2(a) of the Clayton Act (15 U.S.C. Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 39 Clarkson Street, New York, New York.

PAR. 2. Respondent is engaged in the business of purchasing, packaging and selling dried peas and beans of various classifications (i.e., Lentils, Red Kidney, etc.) and other products to wholesaler-purchasers and retailer-purchasers located in states other than the State of New York. Respondent's total annual sales volume is between \$3,000,000 and \$4,000,000. Its annual sales volume of dried peas and beans is in excess of \$1,000,000. Said sales of dried peas and beans are, in the majority of instances, made under the trade name of Redbow.

Respondent has sold and is now selling and distributing its dried peas, beans and other products in New York State to wholesaler-purchasers who resell said products in states other than New York. Said products are sold and delivered by respondent in New York in anticipation of shipment and subsequent resale outside the State of New York.

PAR. 3. Respondent, in the carrying on of its business operations and in the performance of various acts and practices connected therewith, as hereinbefore and hereinafter alleged, has been and is now engaged in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 4. Respondent, in the course of its business in commerce as set forth in Paragraphs Two and Three, has sold and is now selling its dried peas, beans and other produce to wholesalers as well as to retailers. Respondent's wholesaler-purchasers resell to retailers, and its retailer-purchasers resell to consumers. Many of respondent's wholesaler-purchasers were or are now in competition with other wholesaler-purchasers of respondent.

Respondent itself, in the sale of said products to wholesaler and retailers, is in competition with other sellers of said products.

PAR. 5. Since in or about January, 1958, in the course and conduct of its business in commerce, respondent has discriminated, and is now discriminating, in price in the sale of dried peas, beans and

its other products by having sold or now selling such products of like grade and quality at different prices to different and competing purchasers.

PAR. 6. Included in, but not limited to, the discriminations in price as above alleged, respondent has discriminated in price in the sale of dried peas and beans to wholesaler-purchasers located in the States of New Jersey and New York. Respondent has and does consistently disseminate from time to time a list setting forth the price of its dried peas and beans on a case basis. However, the actual price per case that is charged wholesalers by respondent varies according to the number of cases purchased. Respondent employs a quantity discount schedule which is discriminatory in favor of a few larger wholesalers in that it provides them with a purchase price substantially lower than the price which respondent charges other competing wholesaler-purchasers. The maximum discounts allowed by respondent to wholesaler-purchasers is based upon quantities so large as to make them in fact unavailable to some, if not the majority, of its wholesaler-purchasers.

One example of such a quantity discount schedule previously and presently publicized, utilized and employed by respondent in the sale of its dried peas and beans is hereinafter set forth:

On a purchase of 100 cases, there is a discount from the list price of 5 cents per case; 250 cases, 10 cents; and 1,000 cases, 15 cents.

PAR. 7. The effect of such discriminations in price by respondent in the sale of dried peas, beans and other products of like grade and quality has been or may be substantially to lessen, injure, destroy or prevent competition:

1. Between respondent and its competitors.
2. Between wholesalers paying higher prices and competing wholesalers paying lower prices for respondent's products.

Mr. Robert G. Cutler for the Commission.

House, Grossman, Vorhaus & Hemley, by *Naomi Ranson*, of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on June 24, 1960, charging it with discrimination in price in the sale of products of like grade and quality to different and competing purchasers, and with discrimination in quantity discounts in favor of a few larger wholesaler-purchasers, in violation of §2(a) of the Clayton Act (15 U.S.C. §13), as amended by the Robinson-Patman Act.

Order

58 F.T.C.

On November 23, 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 §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, hereby accepts the agreement, 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. Respondent The Graham 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 39 Clarkson Street, New York, New York.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent The Graham Company, Inc., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of dried peas, beans and other related products, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

1. Discriminating in the price of such products of like grade and quality by selling to any purchaser at prices higher than those charged any other purchasers where respondent, in the sale of such products, is in competition with any other seller;

2. Discriminating in the price of such products of like grade and quality by selling to any purchaser at prices higher than those charged any other purchaser who competes in the resale and distribution of such products with the purchaser paying the higher price.

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 12th day of January, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent The Graham Company, 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.
