

IN THE MATTER OF
PENICK & FORD LTD., INCORPORATED

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

Docket 8118. Complaint, Sept. 16, 1960—Decision, Apr. 12, 1961

Consent order requiring a manufacturer of food products—including such items as dessert preparations, corn syrup, maple syrup, molasses, pie fillings, and puddings—with annual sales exceeding \$50,000,000, to cease discriminating among its customers in violation of Sec. 2(d) of the Clayton Act, by such practices as paying a retail grocery chain with headquarters in Burlington, Iowa, the amount of \$450 as compensation for advertising in connection with the sale of its products, while not making comparable payments available to the latter's competitors.

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 by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues it complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Penick & Ford Ltd., Incorporated, is a corporation organized, 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 750 Third Avenue, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of food products, including such items as dessert preparations, corn syrup, maple syrup, molasses, pie fillings and puddings. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations. Respondent's sales of its products are substantial, exceeding \$50,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of New York to customers located in other States in the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, and particularly since 1958, respondent paid or contracted for the payment of something of value to or for the benefit of some 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 were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1959, respondent contracted to pay and did pay to Benner Tea Company, a retail grocery chain with headquarters in Burlington, Iowa, the amount of \$450.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Benner Tea Company in connection with its offering for sale or sale of products sold to it by respondent. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Benner Tea Company 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, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Perechinsky supporting the complaint.

Breed, Abbott & Morgan of New York, N. Y., for respondent

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that the above-named respondent in the course and conduct of its business in commerce has violated Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

After issuance and service of the complaint, the above-named respondent, its attorneys and counsel supporting the complaint entered into an agreement for a consent order. The agreement has been approved by the Director and the Associate Director of the Bureau of Litigation. The agreement disposes of the matters complained about.

The pertinent provisions of said agreement are as follows: Respondent admits all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said 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 record herein shall consist solely of the complaint and the agreement; respondent waives the requirement that the decision must contain a statement of findings of fact and conclusions of law; respondent waives further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondent waives any right to challenge or contest the validity of the order entered in accordance with the agreement and the signing of said 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 undersigned hearing examiner having considered the agreement and proposed order, hereby accepts such agreement, makes the following jurisdictional findings, and issues the following order:

JURISDICTIONAL FINDINGS

1. Respondent, Penick & Ford Ltd., Incorporated, 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 750 Third Avenue, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended.

ORDER

It is ordered, That respondent Penick & Ford Ltd., Incorporated, 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 any of its products

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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 customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's products, unless such payment or consideration is 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 12th day of April 1961, 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