

Pursuant to section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 10th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That 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.

IN THE MATTER OF

CONTAINER STAPLING CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT

Docket 8082. Complaint, Aug. 19, 1960—Decision, June 13, 1961

Consent order requiring one of the nation's largest manufacturers of carton closing staples, stapling machines, parts, and accessories, to cease violating Sec. 3 of the Clayton Act by selling its products on the condition that purchasers not use or deal in similar products sold by its competitors, and that purchasers of its staplers and parts buy its staples for use therein.

COMPLAINT

The Federal Trade Commission having reason to believe that Container Stapling Corporation, a corporation, and Dr. Blanche Schafroth, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of Section 3 of the Clayton Act (15 U.S.C.A. Sec. 14), and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A. Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Container Stapling Corporation, hereinafter referred to as Container, is a corporation organized and existing under the laws of the State of Nevada with its principal place of business located at Herrin, Illinois.

Respondent Dr. Blanche Schafroth, an individual, is vice president and secretary of respondent Container and has controlled and directed the sales policies and practices of the corporate respondent, including the methods, acts and practices mentioned herein. The address of individual respondent Dr. Blanche Schafroth is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for some years, engaged in the manufacture, distribution and sale of industrial carton-closing staples, staplers, parts and accessories. Respondents now sell, and for some years have been selling, such products to independent distributors and dealers located throughout the United States who in turn make sales directly to users. Respondents' industrial carton-closing staples, staplers, parts and accessories, enjoy wide sales throughout the United States and respondent Container is one of the largest manufacturers and distributors of such equipment in the industry. In the past, prior to the advent of staples for this purpose, such closing operation was usually done by means of glue or gummed paper, or similar means not here involved. Respondent Container's annual sales of its industrial carton-closing staples, staplers, parts and accessories are substantial, being \$1,894,000 in 1958.

PAR. 3. Respondents are now, and have been engaged in commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. Respondents cause carton-closing staples, staplers, parts and accessories, manufactured by respondent Container to be transported from the manufacturing plant located at Herrin, Illinois, to independent distributors and customers located throughout the several states of the United States, and there is now, and has been for some years, a constant current of trade in commerce in said products between and among the various states of the United States, and the District of Columbia.

PAR. 4. In the course and conduct of their business, as herein described, respondents are and have been in substantial competition in the sale and distribution of industrial carton-closing staples, staplers, parts and accessories, in commerce between and among the various states of the United States and the District of Columbia, with other persons and corporations.

PAR. 5. In the course and conduct of their business of manufacturing and selling carton-closing staples, staplers, parts and accessories, respondents have made sales and contracts for the sale of such products, and are now making such sales and contracts for the sale of such products on the condition, agreement or understanding that the purchasers thereof shall not sell, deal or distribute

carton-closing staples, staplers, parts and accessories, sold or supplied by a competitor, or competitors, of respondents. Respondents have followed a consistent policy of requiring the independent distributors and dealers to whom they sell their carton-closing staples, staplers, parts and accessories, to discontinue handling like or similar products supplied or sold by any competitor, or competitors, of respondents and not to handle any such products except those sold to such distributors and dealers by respondents.

PAR. 6. In the course and conduct of their business as hereinabove described, respondents have sold, and attempted to sell, staplers, parts and accessories on the condition, agreement or understanding, that the purchasers thereof would buy the carton-closing staples for use, or for resale for use, in the operation of respondents' carton-closing staplers from respondents.

PAR. 7. Competitors of respondents have been, and now are, unable to make sales of carton-closing staples, staplers, parts and accessories, because of the conditions, agreements, and understandings and practices described above in Paragraphs Five and Six. The distributors and dealers of respondents who purchase and sell respondents' carton-closing staples, staplers, parts and accessories, constitute a large and substantial market for such products, and sales by respondents to such distributors and dealers have been, and are now, substantial.

PAR. 8. The effects of the sales and contracts of sale upon such conditions, agreements and understandings, and pursuant to the practices of respondents, as herein described, may be to substantially lessen competition with respondents in such line of commerce, and may tend to create a monopoly in respondents in such line of commerce, in which respondents have been, and are now, engaged.

PAR. 9. The aforesaid acts and practices of respondents constitute a violation of the provisions of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

Mr. Daniel H. Hanscom supporting the complaint.

Winters, Powless & Morgan, of Marion, Ill., by *Mr. Charles D. Winters*, for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on August 19, 1960, charging them with violation of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act in connection with the distribution and

1088

Order

sale of industrial carton closing staples, staplers, parts and accessories.

On March 20, 1961, there was submitted to the hearing examiner an agreement between respondents, their counsel, and counsel supporting the complaint, providing for the entry of a consent order. Attached to and made a part of the agreement is an affidavit stating that respondent Dr. Blanche Schafroth has not resided in the United States since September 1959 and has not been active in the sales and distribution activities of corporate respondent in the United States since that date.

Under the terms of the agreement, the respondents admit 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 respondents 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 respondents that they have 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. Respondent Container Stapling Corporation is a Nevada corporation with its office and principal place of business located in Herrin, Illinois. Respondent Dr. Blanche Schafroth is an officer of respondent Container Stapling Corporation and her address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered. That Container Stapling Corporation, a corporation, and its officers, directors, agents, representatives and employees, and Dr. Blanche Schafroth, as an officer of corporate respondent, directly or indirectly, or through any corporate, partnership or

other device, in connection with the offering for sale, sale or distribution of carton closing staples, stapling machines, parts or accessories, in commerce, as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or making any contract or agreement for the sale of any such products on the condition, agreement or understanding that the purchaser thereof shall not use, deal in or distribute similar products supplied by any competitor or competitors of respondents.

2. Selling or making any contract or agreement for the sale of stapling machines, parts or accessories on the condition that the purchasers thereof will buy the carton closing staples for use, or for resale for use, in the operation of respondents' carton closing stapling machines from respondents only.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Dr. Blanche Schafroth individually only but not in her capacity as an officer of corporate respondent.

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 13th day of June, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Container Stapling Corporation, a corporation, and Dr. Blanche Schafroth, as an officer of said corporation, 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.
