

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

Docket 8123. Complaint, Sept. 26, 1960—Decision, Aug. 11, 1961

Consent order requiring a manufacturer of plumbing specialties and soil pipe at Tyler, Tex., with annual sales in excess of \$18,000,000, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act, by such

practices as making periodic payments of \$1,000 to the American Radiator and Standard Sanitary Corporation for promoting the sale of its products on television programs in the Dallas, Tex., trading area while not making payments available on proportionally equal terms to all 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 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Tyler Pipe & Foundry Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at Tyler, Texas.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of plumbing specialties and soil pipe.

Respondent sells its products of like grade and quality to a large number of customers located throughout the United States for use or resale therein. Respondent's sales of its products are substantial, exceeding \$18,000,000 annually.

PAR. 3. Respondent, in the course and conduct of its business, as aforesaid, has caused and now causes its said products to be shipped and transported from the state or states of location of its various manufacturing plants, warehouses and places of business, to purchasers thereof located in states other than the state wherein said shipment or transaction originated. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act as amended.

PAR. 4. In the course and conduct of its business in commerce since January 1, 1957, respondent has paid or contracted for the payment of something of value to or for the benefit of certain 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 have not been offered or otherwise 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 1957 and 1958 respondent contracted to pay, and periodically did pay, sums amounting to \$1,000.00 to the American Radiator and Standard Sanitary Corporation for services

and facilities furnished it by American Radiator and Standard Sanitary Corporation in promoting the sale of respondent's products through television programs sponsored by American Radiator and Standard Sanitary Corporation in the trading area of Dallas, Texas. Such payments were not offered or otherwise made available on proportionally equal terms to all other customers competing with American Radiator and Standard Sanitary Corporation 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 herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Lynn C. Paulson supporting the complaint.

Power, McDonald and Mell by *Mr. R. P. Power* of Tyler, Tex., 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 attorney, and counsel supporting the complaint, entered into an agreement for a consent order. The agreement has been approved by the 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

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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 Tyler Pipe & Foundry Company, is a corporation existing and doing business under and by virtue of the laws of the State of Texas, with its office and place of business located at Tyler, Texas.

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, Tyler Pipe & Foundry Company, 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 plumbing specialties, pipe and related products 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 customers of respondent as compensation or in consideration for any services or facilities furnished by or through such customers in connection with the handling, offering for sale, sale or distribution of said products, unless such payment or consideration is affirmatively 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 11th day of August 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 it has complied with the order to cease and desist.

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IN THE MATTER OF

BIGTOP RECORDS, INC., ET AL.

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

Docket 7797. Complaint, Feb. 25, 1960—Decision, Aug. 12, 1961

Order—following enactment of specific statutes which afford adequate protection to the public against the challenged practices—dismissing complaint charging New York City manufacturers of phonograph records with giving illegal "payola" to radio and television disc jockeys.

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 Bigtop Records, Inc., a corporation, Bigtop Record Distributors, Inc., a corporation, and Julian J. Aberbach, Joachim Jean Aberbach, and Freddy Bienstock, individually, and as officers of said corporations, 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 Bigtop Records, Inc., and Bigtop Record Distributors, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 1619 Broadway, New York, New York.

Respondents Julian J. Aberbach, Joachim Jean Aberbach, and Freddy Bienstock are president, vice-president and vice-president, respectively, of the corporate respondents, and formulate, direct and control the acts and practices of said corporate respondents. The addresses of the individual respondents are the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, distribution and sale and/or the offering for sale, sale and distribution of phonograph records to retail outlets and jukebox operators in the various States of the United States.

In the course and conduct of their business, respondents now cause, and for some time last past have caused, the records they manufacture, sell and distribute, when sold, to be shipped from their