

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the Hearing Examiner shall, on the 8th day of September 1961, 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.

IN THE MATTER OF
JAMES LEES AND SONS COMPANY

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

Docket 7640. Complaint, Oct. 28, 1959—Decision, Sept. 8, 1961

Consent order requiring a substantial factor in the carpet industry—with headquarters in Bridgeport, Pa., and several manufacturing plants in other States—to cease discriminating in price between purchasers of its rugs and carpets by (1) use of such devices as an annual cumulative quantity discount system with graduated discounts ranging from 1 to 5% of annual net purchases and under which, while purchasers of up to \$5,001 received no volume discounts, those purchasing over \$90,001 received 5% and thus had a significant price advantage over their smaller competitors; and (2) allowing chain customers to combine the purchase volume of their various stores so as to qualify for the higher discount allowed on the larger aggregate total, so that in many instances an individual non-chain customer which purchased in considerably greater volume than a chain unit competitor received no discount or a lower one than the individual chain store.

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 (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows: .

PARAGRAPH 1. Respondent James Lees and Sons Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Bridgeport, State of Pennsylvania.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets. Respondent is a substantial factor in the carpet industry with a sales volume in 1958 in excess of \$68,120,000 and manufacturing plants located in Glasgow, Virginia, Dahlenega and Rabun Gap, Georgia, and Robbinsville, North Carolina.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, its rugs and carpets, when sold for use or resale, to be shipped from its manufacturing plants in the aforesaid States to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said rugs and carpets in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its rugs and carpets of like grade and quality, by selling said products at higher and less favorable net purchase prices to some purchasers than the same are sold to other purchasers who have been and are in competition with the purchasers paying the higher prices.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices among and between the retailer purchases of its rugs and carpets.

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the total annual net purchases of its rugs and carpets as follows:

<i>Annual Purchases</i>	<i>Discount (Percent)</i>
Under \$5,000.....	0
\$5,001 to \$7,500.....	1
\$7,501 to \$10,000.....	1½
\$10,001 to \$13,750.....	1½
\$13,751 to \$17,500.....	1¾
\$17,501 to \$21,250.....	2
\$21,251 to \$25,000.....	2¼
\$25,001 to \$30,000.....	2½
\$30,001 to \$35,000.....	2¾
\$35,001 to \$40,000.....	3
\$40,001 to \$45,000.....	3¼
\$45,001 to \$52,500.....	3½
\$52,501 to \$60,000.....	3¾
\$60,001 to \$67,500.....	4
\$67,501 to \$75,000.....	4¼
\$75,001 to \$82,500.....	4½
\$82,501 to \$90,000.....	4¾
Over \$90,001.....	5

Respondent's aforescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of \$5,001, for example, receive no volume discounts on their purchases and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedule to chain stores.

Respondent allows said chain purchasers to combine the purchase volume of their various stores so as to qualify for the higher discount allowed on the larger aggregate total of such purchase volume. In many instances the purchase volumes of the different individual stores of the chain are not sufficient to warrant such higher discount, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all the chain stores, each individual store is allowed the higher discount.

In many instances respondent's non-chain customers are purchasing individually from respondent in considerably greater volume than the individual chain store with whom they compete, and in so doing receive either no discount, or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain store is allowed the aforescribed higher discount. The products sold under respondent's various product lines are of like grade and quality in their respective lines, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain store customers. In many instances the individual chain stores and the independently owned stores are located in the same city or metropolitan area and both the chain and non-chain stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative net price differences occasioned between and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during 1958, are as follows in but three sample trade areas:

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Akron, Ohio, Trade Area

Customer	Purchase volume ¹	Rebate (percent)
The M. O'Neill Company (chain store)	\$34,364.65	-----
Affiliated chain stores outside trading area	32,725.82	-----
	67,090.47	4.00
A. Polsky Co. (chain store)	55,509.75	3.75
The Ohio Furniture Co.	14,274.04	1.75
Long & Co., Inc.	8,749.71	1.25
M. Holub Furniture Co., Inc.	5,452.37	1.00
Gene Kistler, Inc.	2,054.04	0

¹ Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

Cleveland, Ohio, Trade Area

Customer	Purchase volume ¹	Rebate (percent)
The Higbee Company	\$118,701.07	5.00
The Fries & Schuele Co.	59,304.33	3.75
J. L. Goodman Furniture Co.	48,686.26	3.50
Carlisle Allen Co.: Ashtabula, Ohio	21,717.90	-----
Painesville, Ohio	8,989.27	-----
Warren, Ohio	11,054.44	-----
	41,761.61	3.25
Irwin & Co.	39,902.37	3.00
Banks Furniture & Equipment Co.	18,970.84	2.00
Marshall Smith, Inc.	17,205.35	1.75
Glyn & Boker	11,207.41	1.50
Gail G. Grant Co.	8,564.23	1.25
Willard T. Parker	5,030.29	1.00
Interior Craft, Inc.	4,103.90	0

¹ Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

Washington, D.C., Trade Area

Customer	Purchase volume ¹	Rebate (percent)
E. P. Hinkel & Co., Inc.	\$105,343.79	5.00
The W. D. Campbell Co.	89,783.40	5.00
R. Mars Contract Co., Inc. (chain store)	36,083.54	-----
Affiliated chain stores outside trading area	31,230.74	-----
	67,314.28	4.00
Reliable Stores Corp., Balt., Md.: National Furniture, Wash., D.C. (chain store)	948.92	-----
House & Hermann, Wash., D.C. (chain store)	6,395.06	-----
Julius Lansburg Furniture Co., Inc., Wash., D.C. (chain store)	7,637.89	-----
Hub Furniture Co., Wash., D.C. (chain store)	20,609.47	-----
Affiliated chain stores outside trading area	20,425.30	-----
	55,506.64	3.75
Kens Carpet Corner	36,112.73	3.00
S. Kann Sons Co.	24,979.19	2.25
Wm. E. Miller Furniture Co.	24,233.32	2.25
Carpet Center	16,873.98	1.75
Owens Furniture Mart	14,841.91	1.75
Hampshire House Furniture Co.	12,374.89	1.50
Curtis Bros., Inc.	10,053.19	1.50
Stratford Carpet Shop, Inc.	9,579.27	1.25
C. L. Barnes & Sons	8,992.43	1.25
Nazarian Bros.	6,092.01	1.00
Mazor Masterpieces Furniture Co.	5,391.66	1.00
Office Furniture, Inc.	4,475.40	0
Schneider Furniture	4,501.22	0

¹ Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payment within specified time periods.

PAR. 6. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said products of like grade and quality sold in manner and method and for purposes as aforesaid, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent or said favored purchasers.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

Mr. Eldon P. Schrup for the Commission.

Montgomery, McCracken, Walker & Rhoads, by *Mr. John F. Headley*, Philadelphia, Pa., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1959, amended June 7, 1961, the respondent is charged with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

On June 29, 1961, respondent, by its duly authorized officer and counsel, entered into an agreement with counsel in support of the complaint for a consent order, which was submitted to the hearing examiner for his consideration on July 26, 1961.

Under the foregoing agreement the respondent admits the jurisdictional facts alleged in the amended 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. The agreement 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 amended complaint, and that said amended complaint may be used in construing the terms of the order.

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.

Under the agreement the complaint, as amended, insofar as it concerns the allegation of "primary line injury," namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy or prevent competition with said respondent, should be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegation.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of this proceeding 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. James Lees and Sons Company, prior to March 25, 1960, was a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the City of Bridgeport, State of Pennsylvania.

2. Pursuant to the order of the hearing examiner, the complaint in this proceeding was amended on June 6, 1961, to substitute James Lees and Sons Company, a Delaware corporation, as the respondent herein for reasons as therein set forth.

3. Respondent James Lees and Sons Company, a Delaware corporation, with its office and principal place of business located in the City of Bridgeport, State of Pennsylvania, has accepted service of a true copy of the amended complaint.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent James Lees and Sons Company, a Delaware corporation, its officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the sale of rugs and carpets in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, by cumulative volume discount or otherwise, in the price of rugs and carpets of like grade and quality, by selling to any purchaser at net prices lower than the net price charged any other purchaser competing in fact with such favored purchaser in the resale and distribution of such rugs and carpets.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing

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examiner did, on the 8th day of September 1961, become the decision