

Complaint

IN THE MATTER OF

USEN CANNING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT*Docket 8313. Complaint, Mar. 14, 1961—Decision Sept. 22, 1961*

Consent order requiring a Boston, Mass., distributor of cat food to cease violating Sec. 2(d) of the Clayton Act by discriminating among competing purchasers; for example, paying \$250 to a Jacksonville, Fla., retail grocery chain for promoting its products while not making allowances available on proportionally equal terms to all other competing customers.

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 its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Usen Canning Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 44 Binford Street, Boston, Massachusetts.

PAR. 2. Respondent is now and has been engaged in the production, canning, sale and distribution of cat food. Respondent sells and distributes its products to wholesalers and retailers, including retail chain store organizations.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Massachusetts to customers located in other States of 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, 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.

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PAR. 5. For example, in the year 1960 respondent contracted to pay and did pay to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville, Florida, the amount of \$250.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Winn-Dixie Stores, Inc., 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 Winn-Dixie Stores, Inc., 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.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's complaint charging the respondent named in the caption hereof with violation of Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act, and an agreement by and between the respondent and its counsel and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the complaint, a statement that 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, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Usen Canning Company is a corporation existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 44 Binford Street, in the City of Boston, State of Massachusetts.

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

ORDER

It is ordered, That respondent Usen Canning Company, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with

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the sale of cat food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from :

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for sale, or sale of cat food products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is offered or otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

It is further ordered, That the respondent 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