

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.

IN THE MATTER OF
PAXTON AND GALLAGHER CO.

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

Docket 8176. Complaint, Nov. 17, 1960—Decision, Nov. 7, 1961

Order dismissing, due to complete change of ownership and management of respondent corporation since the time of the alleged violations, complaint charging a coffee roaster in Omaha, Nebr., with unlawfully discriminating among competing customers in paying advertising allowances, in violation of Sec. 2(d) of the Clayton Act.

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 it 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 Paxton and Gallagher Co. 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 8401 W. Dodge Road, Omaha, Nebraska.

PAR. 2. Respondent is now and has been engaged in the roasting, packing, sale and distribution of coffee. Respondent sells and distributes its product to wholesalers and retailers, including retail chain store organizations and grocery co-operatives. Respondent's sales of its products are substantial, exceeding \$1,000,000 annually.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Nebraska 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, 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 \$150.00 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 Perry for the Commission.

Mr. Cecil A. Johnson, Omaha, Nebr., and *Mr. W. Buck Arnold*, Houston, Tex., for respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter, issued November 17, 1960, charged the respondent, Paxton and Gallagher Co., a Delaware corporation having its place of business in Omaha, Nebraska, with violation of

Section 2(d) of the Clayton Act, as amended by the Robinson-Patman Act. On December 8, 1960, respondent filed its answer. No hearings have been held.

A motion to dismiss the complaint has now been filed on behalf of respondent by its counsel, the grounds assigned for the motion being as follows:

1. Since the time of the alleged violations there has been a complete change of ownership of respondent. On August 2, 1961, all of the outstanding capital stock of the company was acquired by Duncan Coffee Company, a Texas corporation, which has its office in Houston, Texas. At the present time respondent is being operated as a wholly owned subsidiary of Duncan Coffee Company, and it is contemplated that respondent will be liquidated into Duncan Coffee Company.

2. Since the time of the alleged violations there has been a major change in the management of respondent. During the period of the alleged violation and until April 15, 1961, the president and executive head of respondent was W. Clarke Swanson, who exercised complete control over all of the company's policies and practices. On April 15, 1961, Mr. Swanson died. The president executive director of respondent is Charles Duncan, who is also president and executive director of Duncan Coffee Company.

Supporting the motion is an affidavit by one of respondent's counsel who has personal knowledge of the matters set forth in the motion.

The motion is not opposed by counsel supporting the complaint.

In view of the circumstances, particularly the circumstance that respondent is to be liquidated and lose its corporate identity, it is concluded that the motion should be granted and the complaint dismissed, the dismissal, however, to be without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted.

ORDER

It is therefore ordered, That the complaint be, and it hereby is, dismissed, without prejudice to the right of the Commission to take any further action in the matter in the future which may be warranted by the then existing circumstances.

DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice effective July 21, 1961, the initial decision of the hearing examiner shall, on the 7th day of November, 1961, become the decision of the Commission.

Complaint

59 F.T.C.

IN THE MATTER OF

UNION PENCIL COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8216. Complaint, Dec. 8, 1960—Decision, Nov. 7, 1961*

Consent order requiring three affiliated Yonkers, N.Y., concerns to cease representing falsely in form letters mailed their customers that the addressee could purchase their pens and pencils at a saving because, in filling an order for a firm with a name similar to his, they had pulled the wrong card from a file and had in error imprinted pencils with his name and address; and that they were the manufacturers of Micro-Line Ball Pens.

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 the Union Pencil Company, Inc., a corporation, Unipenco Inc., a corporation and York Pen Corp., a corporation and Max Grossman, Arthur Grossman and Murray Rubinfeld, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of the 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. Respondent Union Pencil Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Respondent Unipenco, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Respondent York Pen Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 362 South Broadway, Yonkers, New York.

Individual respondents Max Grossman, Arthur Grossman and Murray Rubinfeld are officers of the corporate respondents. They formulate, direct and control the acts and practices of the corporate respondents, including the acts and practices hereinafter set forth. Their address is the same as the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of general