

Complaint

IN THE MATTER OF

THE REGINA CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d)
OF THE CLAYTON ACT*Docket 8421. Complaint, June 2, 1961—Decision, Feb. 2, 1962*

Consent order requiring a Rahway, N.J., distributor of floor polishers, waxers, and vacuum cleaners and parts and accessories therefor, with gross annual sales in excess of \$12,000,000, to cease violating Sec. 2(d) of the Clayton Act by giving compensation for services to certain favored customers but not to others competing with them, such as (1) a payment of \$1,612 toward the salary of demonstrating sales persons hired by Abraham & Straus, (2) promotional allowances of \$1,000 paid to L. R. Beavis & Co., a distributor of its products, and of \$2,501 paid to Gimbel Brothers, Inc., of New York, and (3) varying amounts paid different customers in connection with advertising programs, which bore no relation to the amounts accrued by them upon purchases.

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 (U.S.C. Title 15, Sec. 13), as amended, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Regina Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office, factory and principal place of business located at Regina Avenue, Rahway, N.J.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution of floor polishers, waxers, and vacuum cleaners with parts and accessories thereto. Respondent sells these products to distributors and indirectly through such distributors to retailers such as department stores and appliance stores, and also directly to such retailers. These retailers have businesses located in various cities throughout the United States.

The Regina Corporation's gross sales volume is in excess of \$12,000,000 annually.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be transported in commerce, as "commerce" is defined in the Clayton Act, as amended, from its principal place of business in the State of New Jersey to customers located in the same and in other States of the United States and the District of Columbia.

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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, directly or indirectly, by said respondent, and such payments, sometimes hereinafter referred to as promotional allowances, were not available on proportionally equal terms to all other customers competing in the distribution of its products.

PAR. 5. Included among, and illustrative of the payment alleged in paragraph 4, were credits, paid by way of allowances or deductions, to certain favored customers during 1959 and 1960. During the period January 1, 1959, through November 30, 1960, respondent contracted to pay and paid \$1,612.00 toward the salary of demonstrating sales persons hired by Abraham & Straus in connection with the offering for sale and sale by Abraham & Straus of respondent's products without making such monies available to customers competing with the aforesaid favored customer.

PAR. 6. As a further example, during the period May 1, 1960, through November 30, 1960, L.R. Beavis & Co., Inc., a distributor of the respondent's products, was paid or credited \$1,000.00 (one thousand dollars), from respondent's Associate Fund as a promotional allowance. Respondent did not offer, or otherwise make available, to distributors competing with said favored distributor promotional allowances on proportionally equal terms.

In addition, certain retailers purchasing respondent's products through distributors were paid promotional allowances not offered or paid on proportionally equal terms to competing retailers purchasing respondent's products through the same, and through different distributors. For example, Gimbel Brothers, Inc., of New York, was paid \$2,501.00 as promotional allowances during the period January 1, 1960, through November 30, 1960, while during the same period no promotional allowance was offered or otherwise made available to B. Altman & Company, Inc., of New York. The two stores named in this example are competitors in the sale of respondent's products, and both stores purchase said products through the same distributor.

PAR. 7. During the years 1958 through and including 1960, and for some years prior thereto, respondent maintained advertising programs for each customer purchasing directly from the respondent based upon varying accruals, depending upon the product and model purchased. These direct purchasing accounts were not advised or otherwise informed of the amount of advertising monies which ac-

crued per machine, nor were they advised or otherwise informed of their total advertising accruals. Some direct purchasing customers received promotional allowances in excess of the amount accrued by them, while other competing direct purchase customers were not offered, nor did they receive, promotional allowance monies which they had accrued.

For example, during the period January 1, 1959, through November 30, 1960, R. H. Macy & Co. accrued \$6,078.50 in promotional allowances and was paid \$16,933.58; Abraham & Straus accrued \$3,723.00 and was paid \$10,290.18; Bamberger's accrued \$1,219.50 and was paid \$764.03. The three customers named in this example compete with one another in the sale of respondent's products.

As a condition to the receipt of credit or payment from the respondent for advertising its products, such as those described in this paragraph and in paragraph 6, customers were required in placing such advertisements either to mention no price at all, or to list a price no lower than that suggested by respondent.

PAR. 8. The promotional allowances referred to in paragraphs 5, 6, and 7, were not, and are not, available on proportionally equal terms to all of respondent's customers competing in the distribution of respondent's products in that:

(1) Respondent made, or offered to make, such allowances to some customers and failed to make, or offer to make, similar allowances to all competing customers, and (2) the terms and conditions of respondent's various promotional plans were, and are, such as to preclude some competing customers from accepting and enjoying the benefits to be derived from said plans.

PAR. 9. The acts and practices of respondent as alleged above violate subsection (d) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

DECISION AND ORDER

This matter having come 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 subsection (d) of Section 2 of the Clayton Act, as amended, and an agreement by and between respondent 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

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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 The Regina Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Rahway, State of New Jersey.

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

ORDER

It is ordered, That respondent The Regina Corp., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of business 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 customer of respondent as compensation or in consideration for advertising, demonstrator services, or any other services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of floor polishers, waxers, vacuum cleaners, and related products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customers in the distribution of such products.

It is further 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 this order.

IN THE MATTER OF
MISSION CITRUS GROWERS, INC.