

IN THE MATTER OF
THOMPSON-HAYWARD CHEMICAL COMPANY

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

Docket 7527. Complaint, June 26, 1959—Decision, July 31, 1962

Order dismissing, because of liquidation of the business concerned, complaint charging a manufacturer of liquid laundry bleach, with plants in Kansas and Texas, with price discrimination in violation of Sec. 2(a) of the Clayton Act.

COMPLAINT

Pursuant to the provisions of the Clayton Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Thompson-Hayward Chemical Company, a corporation, hereinafter referred to as respondent, has violated the provisions of subsection (a) of Section 2 of said Act (U.S.C., Title 15, Sec. 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri. Its office and principal place of business is located at 2915 Southwest Boulevard, Kansas City 8, Mo.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of selling industrial and agricultural chemicals, some of which it manufactures, for use, consumption, and resale within various States of the United States. Respondent operates approximately 18 branches or divisions in 12 States, its total annual sales amounting to approximately \$24 million.

Among said products which respondent manufactures is bleach, including liquid laundry bleach. One of its bleach plants is located in the State of Kansas and another in the State of Texas.

PAR. 3. Respondent is now, and for some time prior to the year 1954 has been, engaged in commerce, as "commerce" is defined in the Clay-

ton Act, as amended, in that it ships or causes to be shipped bleach from the State of Kansas to purchasers located in other States of the United States.

PAR. 4. During the year 1954 respondent established a bleach plant in Dallas, Texas, and since that time has been engaged in selling bleach to customers, including laundries, in the Dallas-Fort Worth, Texas, trading area. In the course of such sales of bleach, it has been and is competitively engaged with other corporations and with partnerships, firms, and individuals. The liquid laundry bleach manufactured at and sold and shipped from its Dallas plant was and is of like grade and quality with that manufactured at and sold and shipped from its Kansas plant.

PAR. 5. Prior to the year 1954 and since that time, respondent, in its sales of liquid laundry bleach to customers located in the Kansas City, Missouri, area, has charged the following prices:

Quantity	Price
1 only five gallon crate-----	\$0.75 per gallon
2 to 4 five gallon crates-----	.50 per gallon
5 or more five gallon crates-----	.40 per gallon

Shortly after respondent opened its plant at Dallas, Texas, it began selling liquid laundry bleach in the Dallas-Fort Worth area at a price of \$.25 per gallon in five-gallon crates and subsequently cut this price to \$.20.

PAR. 6. Such differences in prices charged resulted in price discrimination. As a result of respondent's said pricing practices a substantial number of customers have been lost by its competitors to respondent, and said competitors have suffered a serious loss of business.

The effect of such discriminations in price made by respondent, as alleged herein, may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy, or prevent competition with respondent.

PAR. 7. The foregoing acts and practices of respondent, as above alleged, violate Section 2(a) of the Clayton Act, as amended.

Mr. Brockman Horne supporting the complaint.

Mr. C. E. Lombardi, Jr., of Caldwell, Blackwell, Oliver & Sanders, for respondent, Kansas City, Mo.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The Thompson-Hayward Chemical Company, a corporation, herein-after called respondent, is charged with price discrimination in the

sale of liquid laundry bleach manufactured and sold by it, in violation of the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

In May, 1960, a four-day hearing was held at which time oral testimony and documentary evidence was received in support of and in opposition to the allegations of the complaint. Counsel supporting the complaint did not rest his case-in-chief at this hearing. The proceeding is now before the hearing examiner upon the motion filed by Commission counsel to dismiss the complaint on the ground that the matters in issue have become moot. Naturally, opposition to said motion to dismiss has not been filed.

The motion to dismiss is based upon an affidavit executed by R. S. Thompson, President of Leeds Investment Company, a Missouri corporation, formerly named Thompson-Hayward Chemical Company, the respondent herein. The affidavit, which is attached to the motion to dismiss filed by counsel supporting the complaint states, among other things, the following:

On June 1, 1961, Thompson-Hayward Chemical Company, the corporate respondent, exchanged all of its assets (including all assets used in the manufacture and sale of liquid laundry bleach), with the exception of a certain amount of cash retained for payment of expenses for shares of stock of Consolidated Electronics Industries Corp., a Delaware corporation, representing less than 8% of the total outstanding stock of that company; upon the completion of this exchange, the corporate respondent Thompson-Hayward Chemical Company changed its name to Leeds Investment Co. and distributed to its shareholders all of its assets with the exception of the cash referred to above, and a certain portion of said shares which it is required by the terms of its contract with Consolidated Electronics Industries Corp. to retain for a period of twelve months from June 1, 1961, to secure any claim of the latter company with respect to undisclosed liabilities; the said Leeds Investment Company is in the process of liquidation and upon the completion of the said twelve-month period, its liquidation will be completed; neither the said company nor its stockholders have any intention of entering the bleach business again; that the above-described transactions were entered into by reason of business considerations only, and not for the purpose of frustrating the pending complaint.

The affidavit further states that the assets acquired by Consolidated Electronics Industries Corp. were transferred to a wholly owned subsidiary, a Delaware corporation, which has been named Thompson-

Hayward Chemical Company; that most of the managerial and operating personnel of the old Thompson-Hayward Chemical Company, respondent in this proceeding, have become employees of the new Thompson-Hayward Chemical Company, a Delaware corporation, although Mr. C. T. Thompson, who was the chief executive officer and determined the policy of the old company, is not active in the management of the new company, and policy and operational management of the new company are governed by the Board of Directors and management of Consolidated Electronics Industries Corp. in cooperation with the Board of Directors and local management of its subsidiary, the new Thompson-Hayward Chemical Company; and neither the old company nor its stockholders were in any way related to the new company prior to the above-described transaction.

The motion to dismiss states that the address of Consolidated Electronics Industries Corp. is 100 East 42nd Street, New York 17, New York. The motion further states that, by reason of the facts set out in the affidavit and which are recited above, the case pending against the corporate respondent is moot and no purpose will be served by further prosecution of this proceeding.

The hearing examiner has considered said motion to dismiss and the contents of the affidavit and is of the opinion that it will not be in the public interest to further litigate the acts and practices alleged to have been performed by the corporate respondent prior to its change of name and acquisition by Consolidated Electronics Industries Corp. and dissolution. Accordingly,

It is ordered, That the complaint in this proceeding be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION

Pursuant to Section 4.19 of the Commission's Rules of Practice, effective June 1, 1962, the initial decision of the hearing examiner shall, on the 31st day of July 1962, become the decision of the Commission.

IN THE MATTER OF GIANT FOOD, INC.

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