

Complaint

61 F.T.C.

IN THE MATTER OF
DIAPERWITE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(d)
AND 2(e) OF THE CLAYTON ACT

Docket C-226. Complaint, Sept. 11, 1962—Decision, Sept. 11, 1962

Consent order requiring New York City manufacturers of a compound for use in washing baby diapers and sold to drug and grocery stores and chains, to cease violating Secs. 2(d) and 2(e), respectively, of the Clayton Act by (1) making payments to certain retail grocery chains and certain wholesale grocers pursuant to a contract which provided for a quarterly allowance of 5% of purchases in return for two one-column-inch newspaper advertisements plus in-store displays during the quarter, while not making the contract available to many of the favored purchasers' competitors and not making any alternative plan available to customers who could not utilize newspaper advertising and, further, failing to require full performance from the favored customers, and making lump sum payments to certain customers on the basis of individual negotiations and without reference to purchases; and (2) by furnishing their "Diaperwite" product in one-ounce sample size packages without charge and with freight prepaid to some of their customers but not to all such customers' competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Diaperwite, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 99 Hudson Street, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of manufacturing and selling a compound used in washing baby diapers. This compound is sold by said respondent under the registered trademark "Diaperwite." Respondent's product "Diaperwite" is purchased from respondent for resale by drugstores and drug chains and by grocery stores and grocery chains located in every State of the United States. Said respondent's sales in the fiscal year ending May 31, 1961, totalled

approximately \$333,000 and were distributed among approximately 700 customers.

PAR. 2. Respondents Abraham Hochberg, Burton Hochberg and Helena Barkman, individuals, are the president, vice president and secretary-treasurer, respectively, of respondent Diaperwite, Inc. Said individual respondents control, dominate and direct the acts and practices of said corporation. The acts and practices of said corporation as hereinafter alleged were adopted and pursued with the knowledge and approval and at the behest of said individual respondents. The corporate respondent and the individual respondents will be referred to collectively as "the respondents", hereinafter, unless otherwise indicated.

PAR. 3. Respondents have sold and distributed and now sell and distribute their product "Diaperwite" in substantial quantities in commerce as "commerce" is defined in the amended Clayton Act, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents have paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such customers in connection with the handling, sale, or offering for sale of products sold to them by said respondents. Such payments or allowances were not made available on proportionally equal terms to all other customers of respondents competing in the distribution of such products.

PAR. 5. As an example of the practices alleged herein, respondents have made payments or allowances to certain customers operating retail grocery chains and to certain wholesale grocers pursuant to a contract drafted by said respondents which provides for a quarterly allowance of 5% of purchases in return for two one-column-inch newspaper advertisements plus in-store displays during the quarter. This contract has not been made available to many customers of said respondents who compete in the distribution of respondents' products with the favored customers. Other customers of said respondents who compete in the distribution of respondents' products with the favored customers are unable to utilize newspaper advertising, and said respondents have failed to make available to these customers any alternative plan which would provide for proportionally equal treatment. Additionally, said respondents, on occasions, have failed to require from their favored customers, as a prerequisite to payment, the full performance as set forth in the contract. Among the favored cus-

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tomers receiving payments under this contract during the fiscal year ending May 31, 1960 are:

<i>Customer</i>	<i>Approximate Amount Received</i>
<i>Retail:</i>	
Food Fair.....	\$1,962.02
Grand Union.....	740.59
Twin County Grocers, Inc.....	645.48
Wakefern Food Corp.....	247.33
<i>Wholesale:</i>	
Hudson Wholesale Grocery Co.....	208.50
General Trading Co.....	64.80

As a further example of the practices alleged herein, said respondents, on the basis of individual negotiations, have made payments to certain favored customers pursuant to agreements contemplating lump sum payments without reference to the purchases of such favored customers. In some instances, such agreements expressly stated that payments thereunder would be in addition to the 5% contractual payments described above. Such lump sum payments were not made available on proportionally equal terms by said respondents to all of their other customers competing in the distribution of respondents' products with the favored customers. Among the special arrangements thus negotiated on an individual basis by said respondents were:

1. Food Fair Stores, Inc. In May, 1958, said respondents paid \$750.00 to this favored customer for participation in a special "Anniversary Promotion". Respondents' products were featured by Food Fair stores located throughout New Jersey and in Baltimore, Maryland, and Philadelphia, Pennsylvania.

On May 14, 1959, respondents paid \$300.00 to this customer for in-store promotions for one week in 90 Food Fair stores located in New Jersey and for inclusion in 35 Food Fair advertisements in newspapers of general circulation in New Jersey.

On August 6, 1959, respondents paid \$300.00 to this customer for in-store promotions for one week in 117 Food Fair stores located in Philadelphia, Pennsylvania and for inclusion in 21 Food Fair advertisements in Philadelphia newspapers of general circulation.

On August 20, 1959, respondents paid \$150.00 to this customer for in-store promotions for one week in 61 Food Fair stores located in Baltimore, Maryland, and throughout Virginia and southern Pennsylvania and for inclusion in 10 Food Fair advertisements in newspapers of general circulation in these areas.

During the third quarter of 1959, respondents doubled Food Fair's regular cooperative advertising allowance of 5% of purchases and paid \$581.25 to this customer, such payment being in reimbursement

of cooperative advertising. During said period, this customer's purchases from respondents totalled \$5,795.50. In return for said payments, respondents' products were included in 76 Food Fair newspaper advertisements and were granted in-store displays throughout the Food Fair chain.

2. American Stores Co. On April 18, 1958, said respondents agreed to pay this customer the flat sum of \$2,500.00 for weekly cooperative radio advertising over WCAU, one of the leading radio stations located in Philadelphia, Pennsylvania. When American's program was subsequently discontinued, respondents agreed to apply the unused balance of the lump sum, \$850.00, to newspaper advertising. The total amount paid to this customer was more than double the amount said customer would have earned under respondents' regular 5% contract. American Stores Co. operates 74 Acme Markets in New Jersey and 67 such stores in Philadelphia, Pennsylvania.

3. Twin County Grocers, Inc. This customer of respondent is a retail cooperative corporation whose member-owners operate 140 grocery stores including 70 Food Town stores located in New Jersey. From 1958 through the third quarter of 1961 respondents, in addition to the regular 5% cooperative advertising allowance, have paid \$25 per month to this customer for a special feature in an order book mailed bi-weekly to member stores. The member stores of this cooperative corporation are engaged in competition in the distribution of respondents' products with many customers of respondents to whom such payments were not made available on proportionally equal terms including other cooperative corporations and voluntary chains which utilize order books mailed periodically to member stores.

4. Hudson Wholesale Grocery Co. This customer is a wholesale grocer selling to 6,500 retail grocers located throughout New Jersey and metropolitan New York. In 1958 respondents paid \$150.00 to this customer for a feature advertisement in an order book printed by Hudson and mailed to all of its customers. This customer is engaged in competition with many other wholesale grocers who are also customers of respondents and who also utilize order books and to whom such payments were not made available on proportionally equal terms.

PAR. 6. The acts and practices of respondents, as alleged above, are in violation of the provisions of subsection (d) of Section 2 of the amended Clayton Act.

COUNT II

PAR. 7. The provisions of paragraphs 1 through 3 of Count I, above are fully incorporated by reference herein as if fully set forth in text.

PAR. 8. In the course and conduct of their business in commerce, respondents furnished or contracted to furnish services or facilities to or for the benefit of some of their customers in connection with the handling, sale, or offering for sale of products sold to them by said respondents. Such services or facilities were not made available on proportionally equal terms to all other customers of said respondents competing in the distribution of such products.

PAR. 9. As an example of the practices alleged herein, respondents have packaged their product "Diaperwite" in a one-ounce sample size. These samples have been furnished without charge and with freight prepaid by said respondents to some of their customers but have not been made available on proportionally equal terms to all of their customers who compete in the distribution of such product with the favored customers. Among the favored customers who have received this service or facility from said respondents are Food Fair and The Grand Union Company.

PAR. 10. The acts and practices of respondents, as alleged above, are in violation of the provisions of subsection (e) of Section 2 of the amended Clayton Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Diaperwite, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located

at 99 Hudson Street, in the city of New York, State of New York.

Respondents Abraham Hochberg, Burton Hochberg and Helena Barkman are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent Diaperwite, Inc., a corporation, its officers, and respondents Abraham Hochberg, Burton Hochberg and Helena Barkman, individually and as officers of said corporation, and respondents' 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:

1. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondents as compensation or in consideration for advertising or display or any other services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of cleaning compounds manufactured, sold or offered for sale by respondents, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution of such products.

2. Furnishing, contracting to furnish, or contributing to the furnishing of any service or facility to, or for the benefit of, any customer of respondents in connection with the processing, handling, sale, or offering for sale of cleaning compounds manufactured, sold or offered for sale by respondents, unless such service or facility is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution of such products.

It is further ordered, That the 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 this order.

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IN THE MATTER OF

HELENE CURTIS INDUSTRIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-227. Complaint, Sept. 11, 1962—Decision, Sept. 11, 1962*

Consent order requiring Chicago manufacturers of equipment for use by beauty shop operators, to cease representing falsely in brochures, pamphlets, circulars, and other advertising literature that their "Tahitian South Seas" and "Magic-Aire Gold Star" hair dryers employed a new method of hair drying, were "air-conditioned", had a wider temperature range than was the fact, and were "Fully Guaranteed".

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 Helene Curtis Industries, Inc., a corporation, and Central Beauty Equipment Company, Inc., a corporation, and Willard Gidwitz and Gerald Gidwitz, individually and as officers of said corporations, hereinafter referred to as respondents, have violated the provisions of 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. Corporate respondents Helene Curtis Industries, Inc., and Central Beauty Equipment Company, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Illinois, with their offices and principal places of business located at 4401 West North Avenue, Chicago, Ill. Corporate respondent Central Beauty Equipment Company, Inc., is a wholly owned subsidiary of corporate respondent Helene Curtis Industries, Inc.

Willard Gidwitz and Gerald Gidwitz are officers of the respondent corporations. They formulate, direct and control the policies, acts and practices of the said corporate respondents. Their address is the same as that of the corporate respondents.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of equipment, for use by beauty shop operators, including electric hair dryers. The said hair dryers, under various brand names including "Magic-Aire Gold Star" and "Tahitian South Seas", are sold to beauty shop operators and to distributors for resale to beauty shop operators.