

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

Docket 7976. Complaint, June 24, 1960—Decision, Nov. 19, 1962

Consent order requiring a Salem, Mass., toy manufacturer to cease violating
Sec. 2(d) of the Clayton Act by granting promotional allowances to certain

wholesale customers in connection with their advertising of its products in the toy catalogues they published and sold to retail outlets for redistribution to the consuming public—such as approximately \$12,000 paid in 1959 to members of an association of toy wholesalers—without offering proportionally equal payments to all customers competing with those so favored.

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 by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Parker Brothers, Inc., is a corporation organized and doing business under the laws of the State of Massachusetts, with its principal office and place of business located at 190 Bridge Street, Salem, Mass.

PAR. 2. Respondent has been engaged, and is presently engaged, in the business of manufacturing and distributing toys. These products are sold and distributed by respondent to wholesalers, department stores and chain stores located in various parts of the nation. Respondent's sales in 1959 approximated \$7,500,000.

PAR. 3. Respondent has sold and distributed, and now sells and distributes, its products 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 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, 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 respondent. Such payments or allowances were not offered or made available on proportionally equal terms to all other customers of respondent competing with said favored customers in the distribution of respondent's products.

PAR. 5. As an example of the practices alleged herein, respondent has granted, and is presently granting, promotional payments or allowances for the promoting and advertising of its products to certain wholesale customers who publish toy catalogues either in combination

with each other through wholesaler associations and groups, or in an individual capacity. The payments or allowances are granted by respondent to said wholesale customers in connection with their advertising respondent's products in their toy catalogues. These catalogues are sold and distributed by said favored wholesale customers to retail outlets for redistribution to the consuming public.

The aforesaid promotional payments or allowances were not offered or granted on proportionally equal terms to all other customers of respondent who compete with said favored customers in the distribution of respondent's products. These unfavored customers include wholesalers who are not members of any toy wholesaler associations or groups. Included among the favored customers are the members of Individualized Catalogues, Inc., New York, New York, an association composed of toy wholesalers which publishes a toy catalogue. In 1959, the promotional payments or allowances granted to the members of said wholesaler association by respondent approximated \$12,000.

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

Mr. James E. Corkey and *Mr. Stanley M. Lipnick* for the Commission.

Mr. Harold M. Wilcox and *Mr. W. Sidney Felton*, of *Herrick, Smith, Donald, Farley & Ketchum*, Boston, Mass., for the respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

In a complaint issued June 24, 1960, the respondent, Parker Brothers, Inc., a corporation, located at 190 Bridge Street, Salem, Massachusetts, was charged with violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. Sec. 13), in 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, 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 respondent, without making such payments or allowances available to all other competing customers on proportionally equal terms.

The respondent, by and with the advice of counsel, and counsel supporting the complaint have entered into an agreement containing a consent order to cease and desist, thus disposing of all the issues involved in this proceeding.

In the agreement it is expressly provided that the signing thereof is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint.

By the terms of the agreement, the respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By the agreement, the respondent expressly waives any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all rights it may have to challenge or contest the validity of the order to cease and desist to be entered in accordance therewith.

Respondent further agrees that the order to cease and desist, to be issued in accordance with the agreement, shall have the same force and effect as if made after a full hearing.

It is further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order to be issued pursuant to said agreement; and that such order may be altered, modified, or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered the agreement and the order therein contained, and, it appearing that said agreement and order provide for an appropriate disposition of this proceeding, the same is hereby accepted and it is hereby ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent named herein, and that this proceeding is in the interest of the public, and issues the following order:

ORDER

It is ordered, That respondent Parker Brothers, Inc., a corporation, and its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Clayton Act, as amended, of any toy, game, or hobby products, 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 any services or facilities consisting of

advertising or other publicity, furnished by or through such customer, in a toy catalogue, handbill, circular, or any other printed publication serving the purpose of a buying guide, distributed, directly or through any corporate or other device, by such customer, in connection with the processing, handling, sale, or offering for sale of any toy, game, or hobby products manufactured, sold, or offered for sale by respondent, unless such payment of consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

ORDER WAIVING FILING OF NOTICE, DECISION OF THE COMMISSION AND
ORDER TO FILE REPORT OF COMPLIANCE

This matter having come before the Commission upon the certification by the hearing examiner, under Section 4.13(c) (9) of the Rules of Practice, of the question of acceptance of a duly executed consent agreement between respondent Parker Brothers, Inc., and counsel supporting the complaint; and

The Commission having concluded that, in the circumstances presented, it should exercise its discretion and waive the requirement for more timely filing of notice:

It is ordered, That the provision of the Commission's Notice of July 14, 1961, requiring the filing of notice by September 1, 1961, be, and it hereby is, waived in this case.

It is further ordered, That the initial decision of the hearing examiner accepting the consent agreement executed by the parties be, and it hereby is, adopted as the decision of the Commission, and; accordingly:

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 it has complied with the order to cease and desist.

IN THE MATTER OF
BILNOR CORPORATION

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