

Complaint

IN THE MATTER OF

ALEXANDER MINER SALES CORP.*

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

*Docket 8102. Complaint Aug. 25, 1960**—Decision, Dec. 5, 1962*

Consent orders requiring eight toy manufacturers in various States to cease violating Sec. 2(d) of the Clayton Act by granting promotional payments for the advertising of their products to certain wholesale customer publishers of toy catalogs—which were distributed by such wholesalers to their retailer outlets for redistribution to consumers—without offering payments on proportionally equal terms to all their other distributor customers competing with those so favored.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are 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 its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Alexander Miner Sales Corp., Docket 8102, 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 430 Southern Boulevard, Bronx, New York.

Respondent The A. C. Gilbert Company, Docket 8104, is a corporation organized and doing business under the laws of the State of Maryland, with its principal office and place of business located at Erector Square, New Haven 6, Conn.

Respondent Aurora Plastics Corp., Docket 8225, 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 44 Cherry Valley Road, West Hempstead, Long Island, N.Y.

Respondent Multiple Products Corporation, Docket 8229, 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 55 West 13th Street, New York, N. Y.

*and the following related cases: The A. C. Gilbert Company, Docket 8104; Aurora Plastics Corp., Docket 8225; Multiple Products Corporation, Docket 8229; Horsman Dolls, Inc., Docket 8241; Tonka Toys, Incorporated, Docket 8242; Radio Steel & Mfg. Co., Docket 8244; Hamilton Steel Products, Inc., Docket 8257.

**Complaints are combined.

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Respondent Horsman Dolls, Inc., Docket 8241, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 200 Fifth Avenue, New York, N. Y.

Respondent Tonka Toys, Incorporated, Docket 8242, is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at Mound, Minn.

Respondent Radio Steel & Mfg. Co., Docket 8244, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 6515 West Grand Avenue, Chicago 35, Ill.

Respondent Hamilton Steel Products, Inc., Docket 8257, is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 1845 West 74th Street, Chicago 36, Ill.

PAR. 2. Respondents have been engaged, and are presently engaged, in the the business of manufacturing and distributing toys. These products are sold and distributed by respondents to wholesalers, department stores and chain stores located in various parts of the nation. Sales for each respondent for the year 1959 were approximately as follows:

	<i>Sales, 1959</i>
Alexander Miner Sales Corp.....	\$2, 500, 000
The A. C. Gilbert Company.....	13, 500, 000
Aurora Plastics Corp.....	5, 000, 000
Multiple Products Corporation.....	3, 500, 000
Horsman Dolls, Inc.....	6, 000, 000
Tonka Toys Incorporated.....	5, 450, 000
Radio Steel & Mfg. Co.....	7, 200, 000
Hamilton Steel Products, Inc.....	4, 360, 000

PAR. 3. Respondents have sold and distributed, and now sell and distribute, their 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 their business in commerce, respondents 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 respondents. Such payments or allowances were not offered or made available on

proportionally equal terms to all other customers of respondents competing with said favored customers in the distribution of respondents' products.

PAR. 5. As an example of the practices alleged herein, respondents have granted, and are presently granting, promotional payments or allowances for the promoting and advertising of their 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 respondents to said wholesale customers in connection with their advertising respondents' 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 respondents who compete with said favored customers in the distribution of respondents' products. These unfavored customers include wholesalers who are not members of any toy wholesaler associations or groups. Some of the favored customers of each respondent are as follows:

Alexander Miner Sales Corp., Docket 8102: Members of ATD Catalogs, 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 \$1,635.

The A. C. Gilbert Company, Docket 8104: Members of ATD Catalogs, Inc. In 1959, the promotional payments or allowances granted to the members of said wholesaler association by respondent approximated \$4,500.

Aurora Plastics Corp., Docket 8225: Members of Santa's Official Toy Prevue, Inc., Philadelphia, Pennsylvania, an association composed of toy wholesalers which publishes a toy catalog. In 1959, respondent paid members of Santa's Official Toy Prevue, Inc., approximately \$550 for promoting and advertising its products.

Another example of respondent's practices which violate Section 2(d) of the amended Clayton Act is its granting of television advertising payments or allowances to certain customers which were not offered or made available on proportionally equal terms to all other competing customers. Respondent paid Pensick and Gordon, Inc., Los Angeles, California, a toy wholesaler, substantial sums of money for promoting and advertising its products on television. During 1960, respondent's payments to said favored customer exceeded \$4,000

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for such promotion. These payments were not offered or made available on proportionally equal terms to all other customers competing with Pensick and Gordon, Inc.

Multiple Products Corporation, Docket 8229: Members of the following:

	<i>Approx. Payments Granted in 1959</i>
Associations or Groups:	
Santa's Official Toy Prevue, Inc.....	\$550
ATD Catalogs, Inc.....	1,650
Individualized Catalogues, Inc.....	750

Another example of respondent's practices which violate Section 2(d) of the amended Clayton Act is its granting of television advertising payments or allowances to certain customers which were not made available on proportionally equal terms to all other competing customers. Included among such favored customers were the following:

	<i>Approx. Payments Granted in 1959</i>
Customer:	
Pensick & Gordon, Inc.....	\$1,680
Lachman-Rose Co.....	840
Harold Hahn.....	2,640

Said payments were not offered or made available on proportionally equal terms to all other customers competing with these favored customers:

Horsman Dolls, Inc., Docket 8241: Members of the following:

	<i>Approx. Promotional Payments Received in 1959</i>
Wholesaler Associations or Groups:	
Billy & Ruth Promotion, Inc.....	\$2,880
Individualized Catalogues, Inc.....	5,650
ATD Catalogs, Inc.....	3,845

Tonka Toys, Incorporated, Docket 8242: Members of the following:

	<i>Approx. Promotional Payments Received in 1959</i>
Wholesaler Associations or Groups:	
Billy & Ruth Promotion, Inc.....	\$2,640
Individualized Catalogues, Inc.....	4,500
ATD Catalogs, Inc.....	3,930
Santa's Official Toy Prevue, Inc.....	550

Radio Steel & Mfg. Co., Docket 8244: Members of the following:

	<i>Approx. Promotional Payments Received in 1959</i>
Wholesaler Associations or Groups:	
Billy & Ruth Promotion, Inc.....	\$1,170
Individualized Catalogues, Inc.....	2,000
ATD Catalogs, Inc.....	915

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Hamilton Steel Products, Inc., Docket 8257: Members of Santa's Playthings, Inc., New York, New York, an association composed of toy wholesalers which publishes a toy catalog. In 1959, the promotional payments or allowances granted to the members of said association by respondent approximated \$800.

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. Jerome Garfinkel for the Commission.

Mr. Martin A. Rothenberg, New York, N.Y., for the respondent.

INITIAL DECISION AS TO RESPONDENT ALEXANDER MINER SALES CORP.
BY HARRY R. HINKES, HEARING EXAMINER

The Federal Trade Commission issued its complaint in the above-entitled matter on August 25, 1960, charging the respondent with having violated Section 2(d) of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), in the sale of toys.

Thereafter, on October 30, 1961, respondent, its attorney, and counsel supporting the complaint herein entered into an agreement containing a consent order to cease and desist.

Under that agreement the respondent admits all the jurisdictional facts alleged in the complaint. The agreement provides that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, the respondents specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The agreement further provides that the decision of the Commission in this proceeding shall not issue prior to the issuance of final orders by the Commission in Docket Nos. 7978 and 7979, and that if any cease and desist order in Docket Nos. 7972, 7974, 7975, 7976, 7977, 7978, 7979, 8101, 8103, 8104, 8224, 8225, 8226, 8227, 8228, 8229, 8230, 8241, 8242, 8243, 8244, 8245, 8254, 8256, 8257, or 8258 is more limited

in scope than the order provided for in this agreement, the Bureau of Restraint of Trade will join in a motion by respondent to the Commission requesting that respondent's order be modified in accordance with a more limited cease and desist order. Moreover, in the event the order of the Commission in Dockets 7978 or 7979, as the result of action by the Commission or final order by the courts, is more favorable in any respect than the order provided for in this agreement, then the Bureau of Restraint of Trade will join in a motion by respondent to the Commission requesting that the order herein be made to conform to the order of the Commission or the final order of the courts in Dockets 7978 or 7979. It is agreed, however, that the cease and desist order provided for in this agreement shall remain in effect unless modified by the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Alexander Miner Sales Corp. is a corporation 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 located at 200 Fifth Avenue, New York 10, New York, (erroneously cited in the complaint as 430 Southern Boulevard, Bronx, New York).
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Alexander Miner Sales Corp., a corporation, its officers, directors, agents, representatives or employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of toy, game or hobby products in commerce, as "commerce" is defined in the amended Clayton Act, 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 furnished by or through such customer in connection with the handling, processing, sale or offering for sale of any toy, game or hobby product 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 in the distribution of such toy, game or hobby product.

DECISION AND ORDER*

These matters having come on to be heard by the Commission each upon a record consisting of a complaint charging the respondent with violation of subsection (d) of Section 2 of the Clayton Act, as amended, an agreement containing a consent order to cease and desist entered into between each respondent and counsel supporting the complaint and a motion by counsel for each respondent, joined by counsel supporting the complaint, relating to the form of order herein;** and

The Commission having considered the agreements, which also contain an admission by respondents of all the jurisdictional facts alleged in the complaint, a statement that the signing of said agreements is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and provisions as required by the Commission's Rules, and which agreements further provide that the decision of the Commission in this proceeding shall not issue prior to the issuance of final orders by the Commission in the matters of *Transogram Company, Inc.*, and *Ideal Toy Corporation*, Docket Nos. 7978 and 7979; and

It further appearing that the agreements contemplate that should the Commission issue any cease and desist order in the aforesaid matters more limited in scope than the order provided for in the agreements, the Bureau of Restraint of Trade would join in motions by the respondents requesting the Commission to conform the order in these proceedings to such more limited order; and

The Commission having, on September 19, 1962, issued final orders in Docket No. 7978 and Docket No. 7979 more limited in scope than the order contained in said agreements and having determined that it should grant respondents' motions and as authorized and requested thereby conform the order to cease and desist to issue herein to said orders, the Commission hereby grants respondents' motions and accepts the agreements, makes the following jurisdictional findings, and enters the following order:

1. (a) Respondent Alexander Miner Sales Corp. is a corporation 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 located at 200 Fifth Avenue, New York 10, New York (erroneously cited in the complaint as 430 Southern Blvd., Bronx, New York).

*As to all eight respondents named in the combined complaints.

**The record in Docket 8102 includes an initial decision by the hearing examiner accepting the consent agreement. As to that proceeding, this decision and order of the Commission accepts the examiner's decision and modifies the order entered as indicated herein.

(b) Respondent The A. C. Gilbert Company is a corporation existing and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at Erector Square, New Haven 6, Connecticut.

(c) Respondent Aurora Plastics Corp. is a corporation 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 located at 44 Cherry Valley Road, West Hempstead, New York.

(d) Respondent Multiple Products Corporation, is a corporation 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 located at 55 West 13th Street, New York, New York.

(e) Respondent Horsman Dolls, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at Columbia, South Carolina (erroneously cited in the complaint as 200 Fifth Avenue, New York, New York).

(f) Respondent Tonka Toys, Incorporated, is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at City of Mound, State of Minnesota.

(g) Respondent Radio Steel & Mfg. Co. is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 6515 West Grand Avenue, Chicago 35, Illinois.

(h) Respondent Hamilton Steel Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1845 West 74th Street, Chicago 36, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of each respondent.

ORDER

It is ordered, That each respondent named in the above-captioned proceedings, 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 such respondent as compensation or in consideration for any services or facilities con-

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sisting 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 such respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That each respondent named in the above-captioned proceedings 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 the order to cease and desist.