

Complaint

61 F.T.C.

IN THE MATTER OF

HALSAM PRODUCTS COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE
CLAYTON ACT*Docket 8230. Complaint, Dec. 22, 1960—Decision, Dec. 13, 1962*

Order requiring a Chicago toy manufacturer to cease violating Sec. 2(d) of the Clayton Act by making payments to certain toy catalog companies controlled by its jobber customers as compensation for advertising its products in the catalogs, while not offering such payments on proportionally equal terms to all its other customers who were in competition 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 its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Halsam Products Company 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 3610 Touhy Avenue, Chicago 45, Ill.

PAR. 2. Respondent has been engaged, and is presently engaged, in the business of manufacturing and distributing toys. These toy 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 exceeded \$2,600,000.

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 re-

spondent. Such payments or allowances were not offered or made available on proportionally equal terms to all other customers of respondent competing with such 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 catalogs, 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 catalogs. These catalogs 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 competing customers include wholesalers who are not members of any toy wholesaler association or group. Included among the favored customers are the members of the following wholesaler associations or groups:

Wholesaler Associations or Groups:	Approx. Amounts Received in 1959
Santa's Official Toy Prevue, Inc.-----	\$1, 100
ATD Catalogs, Inc.-----	2, 250
Individualized Catalogues, Inc.-----	3, 750
Billy & Ruth.-----	2, 880

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.

Finn, Van Melle & Penney, of Chicago, Ill., and *Howrey, Simon, Baker & Murchison*, of Washington, D.C., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

The complaint charges the respondent, Halsam Products Company, 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. As an example of this practice, the complaint alleges the respondent made payments to certain wholesale customers for the advertising of its products in the catalogs of these wholesale customers, without proportionally equal payments to the rest of respondent's customers competing with the recipients of the promotional payments.

Respondent's answer to the complaint, dated March 9, 1961, made partial admissions of the allegations of the complaint, in particular catalog advertising, but denied that any of its promotional payments constituted violations of the Act.

On April 3, 1962, a stipulation was executed by the respondent and counsel for both parties, setting forth certain facts and waiving hearing. Argument was reserved on the scope of the cease and desist order to be entered. Proposed findings and order were submitted by both parties and, on July 30, 1962, oral argument was allowed thereon.

The hearing examiner has considered the proposed findings of fact and conclusions submitted by counsel representing the parties, and all findings of fact and conclusions of law not hereinafter specifically found or concluded are herewith rejected. The hearing examiner having considered the entire record makes the following findings as to the facts, conclusions drawn therefrom, and order.

FINDINGS OF FACT

I

Respondent Halsam Products Company 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 3610 Touhy Avenue, Chicago 45, Illinois.

II

Respondent has been engaged, and is presently engaged, in the business of manufacturing toys, games and hobbies (hereinafter called "products"). These products are sold by respondent to jobbers located in various parts of the nation for resale to retailers. Respondent's sales in 1959 exceeded \$2,600,000.

III

Respondent has sold, and now sells, its products in commerce, as "commerce" is defined in the amended Clayton Act, to customers located

throughout various states of the United States and in the District of Columbia, some of whom are in competition with other of its customers.

IV

In the course and conduct of its business in commerce, respondent made payments to certain toy catalog companies, which companies are owned or controlled, in whole or in part, by jobber customers of respondent. Some of respondent's jobber customers who own or control, in whole or in part, said toy catalog companies, sell and distribute the toy catalogs to retailers for redistribution to the consuming public. Such payments were made as compensation or in consideration for the illustration and description in such catalogs of one or more products sold by respondent to some or all of such jobber customers. Such payments were not offered or made available by respondent on proportionally equal terms to all of its other jobber customers who were in competition in the contemporaneous resale of its products of like grade and quality with those jobber customers who owned or controlled, in whole or in part, a toy catalog company to which such an advertising payment was made.

CONCLUSION

The acts and practices of the respondent as herein found were in 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 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.

Based upon the above findings, the public interest requires the issuance of a cease and desist order. The only question before the examiner is a determination of the type of order that should issue. Counsel supporting the complaint request a broad order; counsel representing respondent argue that the order should be limited to the specific violations admitted by the stipulation. While the examiner, in a similar case, *Emenee Industries, Inc.*, Docket No. 7974 [pp. 629, 690 herein], agreed with the contention of counsel supporting the complaint that a broad order should issue in the language of the Act, the Commission adopted a different view in *Transogram Company, Inc.*, Docket No. 7978 [pp. 629, 703 herein], issued September 19, 1962, and, therefore, the examiner concludes that the precedent

Decision and Order

61 F.T.C.

established in the *Transogram* case is controlling in this proceeding, and, therefore, a similar order must be issued herein.

ORDER

It is ordered, That respondent Halsam Products Company 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 consisting of advertising or other publicity, furnished by or through such customer, in a toy catalog, 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF
COMPLIANCE

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 13th day of December 1962, become the decision of the Commission; and, accordingly,

It is ordered, That 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 the order to cease and desist.

Syllabus

IN THE MATTER OF
M. S. DISTRIBUTING COMPANY

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

Docket 7745. Complaint, Jan. 12, 1960—Decision, Dec. 17, 1962

Order setting aside desist order of May 19, 1960 (56 F.T.C. 1432), requiring cessation of concealed "payola", the enactment of federal statute since the date of the order constituting effective deterrent of the type of practice involved.

ORDER GRANTING RESPONDENTS' PETITION TO REOPEN AND SET ASIDE
ORDER TO CEASE AND DESIST

Upon consideration of respondents' petition, filed November 13, 1962, requesting that the decision of the Commission in this proceeding entered May 9, 1960 [56 F.T.C. 1432], be reopened and the order to cease and desist be set aside, and

It appearing from the matters set forth in respondents' petition that vacation of the order herein would be equitable and in the public interest, and

It further appearing that the enactment by Congress on September 13, 1960, of Public Law 86-752 (74 Stat. 895, 47 U.S.C. 317) constitutes an effective and sufficient deterrent against future violations of the type alleged in this proceeding:

It is ordered, That respondents' petition be, and it hereby is, granted, and that the order to cease and desist previously entered in this proceeding be, and it hereby is, set aside.

IN THE MATTER OF
BALDWIN BRACELET CORP., ET AL.

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

Docket 8316. Complaint, Mar. 14, 1961—Decision, Dec. 18, 1962

Order requiring New York City distributors to cease selling metal expansion watch bands imported from Hong Kong with no marking to indicate their foreign origin; and advertising watch bands as "guaranteed" or "fully guaranteed" when the guarantee was limited and conditional.