

IN THE MATTER OF
ALL-LUMINUM PRODUCTS, INC., ET AL.

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

Docket 8485. Complaint, May 8, 1962—Decision, Nov. 7, 1963

Order requiring a Philadelphia manufacturer of aluminum outdoor casual furniture and folding tables and its affiliated sales company, to cease discriminating among their customers in violation of Sec. 2(d) of the Clayton Act by giving catalog and trade-show allowances to certain of their wholesalers, mail-order distributors, and catalog houses, but not to all the favored customers' competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter

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Complaint

more particularly designated and described, have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents All-Luminum Products, Inc., Windsor Metal Products, Inc., and All-Luminum Sales Corp., Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, all with offices and principal place of business located at 3600 Reed Street, Philadelphia, Pennsylvania. The individual respondents, George Cohen and Boris Cohen, are president and treasurer, respectively, of respondent All-Luminum Products, Inc., and treasurer and president, respectively, of Windsor Metal Products, Inc., and All-Luminum Sales Corp., Inc.

The individual respondents, George Cohen and Boris Cohen, dominate, direct and control all acts, practices and policies of the corporate respondents.

PAR. 2. Respondents are now and have been for some time engaged in the manufacture, distribution and sale of various types of furniture. In the course and conduct of their business in commerce, respondents have engaged and are now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondents sell and cause their products to be transported from their principal place of business in the State of Pennsylvania to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 3. 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 by or through such customers in connection with their offering for sale or sale of products sold to them by respondents, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondents' products.

PAR. 4. For example, for some time since 1959 respondents have made available and continue to make available to certain of their customers cash contributions for the purpose of contributing for advertising of their products in the various catalogs used by such customers to sell said customers merchandise to the trade at large; have given certain customers valuable merchandise to be used as

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prizes at various sales shows; and have made cash contributions to such customers to help defray the expenses of such sales shows.

Such allowances or compensation has not and is not made available on proportionally equal terms to all other customers competing with the said favored recipient customers in the sale and distribution of the aforesaid products purchased from respondents.

PAR. 5. The acts and practices of respondents, as alleged, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Alvin D. Edelson supporting the complaint.

Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., by *Mr. Kimber E. Vought*, for respondents.

INITIAL DECISION BY ANDREW C. GOODHOPE, HEARING EXAMINER

APRIL 5, 1963

The Federal Trade Commission issued its complaint against the respondents on May 8, 1962, charging them with violations of subsection (d) of Section 2 of the Clayton Act, as amended, for failure to make certain promotional advertising monies available on proportionally equal terms to competing customers. The respondents answered admitting a number of the allegations in the complaint, but denying generally the illegality of the practices charged in the complaint. In a stipulation (CX 1), respondents withdrew their denial of interstate commerce and admitted that they are engaged in commerce as alleged in the complaint.

This matter is before the hearing examiner for final consideration upon the complaint, answer, testimony, and other evidence and proposed findings of fact and conclusions filed by counsel for respondent and counsel supporting the complaint.¹ Consideration has been given to the proposed findings of fact and conclusions submitted by both parties, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings of fact, conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

1. All-Luminum Products, Inc. (hereinafter referred to as All-Luminum Products) is a Pennsylvania corporation and is engaged

¹ The record in this matter is brief, consisting of a stipulation between counsel and the testimony of the two individual respondents named in the complaint.

in the business of manufacturing aluminum outdoor casual furniture and folding tables.

2. All-Luminum Sales Corp., Inc. (hereinafter referred to as All-Luminum Sales) is a Pennsylvania corporation which sells certain products manufactured by All-Luminum Products to jobber accounts (sometimes called distributor accounts).

3. Windsor Metal Products, Inc. (hereinafter referred to as Windsor) is a Pennsylvania corporation which sells products manufactured by All-Luminum Products directly to retail or department store accounts.

4. Boris Cohen, an individual, is Treasurer of All-Luminum Products and President of both All-Luminum Sales and Windsor. Boris Cohen and his brother George Cohen own between them ninety-six (96) per cent of the capital stock of All-Luminum Products, All-Luminum Sales and Windsor.

5. George Cohen, an individual, is President of All-Luminum Products and is Secretary-Treasurer of both All-Luminum Sales and Windsor.

6. Boris Cohen is responsible for the sales policy of All-Luminum Sales and Windsor, establishes respondents' policies concerning the payment of allowances to all customers who purchase from All-Luminum Sales and Windsor, and instructs salesmen in regard thereto. He is directly responsible for the acts and practices charged in the complaint and found herein.

7. George Cohen is responsible for manufacturing and production of the products sold and has no responsibility for sales or policies concerning cooperative advertising.

8. In 1959, total sales by All-Luminum Sales and Windsor of products manufactured by All-Luminum Products were about \$6,000,000 and in 1960, about \$5,000,000.

9. The offices and principal place of business of all respondents described above, both corporate and individual, are located at 3600 Reed Street, Philadelphia, Pennsylvania.

10. In the course and conduct of their business in commerce, respondents have engaged in, and are now engaging in, commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondents sell and cause their products to be transported from their principal place of business in the State of Pennsylvania to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

11. All-Luminum Products and All-Luminum Sales, in the years 1959 and 1960, sold to a class of customers called "stocking dis-

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tributors" (or sometimes called "stocking jobbers"). A "stocking distributor" is a distributor who maintains storage and warehouse space enabling him to maintain a constant inventory of hardware, houseware and traffic merchandise and who resells to dealers or retailers.

12. All-Luminum Products and All-Luminum Sales, in the years 1959 and 1960, sold to another class of customers called "non-stocking distributors" (or sometimes called "non-stocking jobbers"). A "non-stocking distributor" does not stock merchandise in a warehouse or in a store. Orders placed with respondents are usually filled by drop shipment direct to the non-stocking jobber's customer.

13. The only exhibit in the record (CX 1) is a stipulation between counsel. Except for an admission of interstate commerce, this entire stipulation is as follows:

PARAGRAPH TWO: With regard to the following witnesses herein listed below by geographical area the following facts are stipulated.

The following distributors made purchases of goods of like grade and quality from respondents All-Luminum Products, Inc. and All-Luminum Sales Corporation during the periods and in the amounts as columnized below, and received promotional allowances as shown, and were during the period set out, and are now, in competition in the resale and distribution of respondents' goods of like grade and quality.

Distributor	1959 purchases	1960 purchases	Advertising and/or promotional allowances		
			1959		1960
NEW JERSEY DISTRIBUTORS					
Newark Specialty Company.	\$10,486.45	\$15,001.31	Catalog Allowance.. \$75.00	Special prizes for furniture show.	\$48.00
				Door prize for show.	14.75
I. Lehrhoff.....	32,224.00	20,316.20	-----	Catalog Allowance..	60.00
Eagle Sales Co.....	13,473.40	11,661.76	-----	Catalog Allowance..	400.00
			-----	Dealer show space..	75.00
Beller Electric Company.	12,016.02	2,243.52	-----	Door prize.....	12.70
H. Schultz & Sons..	5,050.30	4,555.60	-----	Catalog Allowance..	25.00
			-----	Catalog Allowance..	100.00
NEW YORK DISTRIBUTORS					
Masback, Inc.....	8,158.83	9,820.46	Catalog Allowance.. 129.25	Catalog Allowance..	130.46
			Catalog Allowance.. 9.62	Catalog Allowance..	17.00
Beacon.....	10,930.95	5,754.00	Dealer show space.. 60.00	Dealer show space..	60.00
			Door prize—table.. 7.50	-----	
			Dealer show space.. 60.00	-----	
Kornahrens, Inc....	11,698.20	13,154.35	-----	Show prize—table..	11.15
U.S. Electrical Supply.	25,031.93	27,967.80	Catalog Allowance.. 200.00	Catalog Allowance..	200.00
Lafayette Electrical Co.	58,510.95	56,316.66	Catalog Allowance.. 100.00	Catalog Allowance..	100.00
Central Queens.....	9,067.45	10,283.70	-----	Catalog Allowance..	100.00

The above distributors for New Jersey and New York are stocking distributors (who maintain storage and warehouse space enabling them to maintain a constant inventory of hardware, houseware and traffic appliance merchandise) who resell to dealers. The following distributors to whom respondents, All-Luminum Products, Inc. and All-Luminum Products Sales Corp., sell are not stocking distributors as defined above, but do purchase and resell the same goods of like grade and quality as the distributors listed above.

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NEW YORK CITY AREA

Distributor	1959 purchases	1960 purchases	Advertising and/or promotional allowances	
			1959	1960
L. Gastman.....		\$2,243.72		
Manhattan Mfg. & Jobbing.....	\$4,963.80	6,459.80		
Horn Brothers.....	8,219.90	8,037.25		
Admiral.....		544.71		
L. Thaler.....	4,430.49	1,882.90		
Kenwood.....	744.52	786.45		
Westra-Wigod.....	3,012.50	4,628.65		
Travellers Premium.....	3,304.03	4,901.03		
B. M. Luloff.....	890.70	4,872.36		
Wildermuth.....	5,436.35	1,815.00		
H. Isaacson.....	2,896.30	4,011.60		
Good Wear Mop.....	1,215.90	1,357.00		
Akorn.....	11,536.84	135.10		
A. Jacoby.....		811.00		
Herflo.....	1,023.47	1,041.64		
Fralieb.....	2,559.80	2,053.20		
Keenlan.....	44.09	78.85		
Connelle.....	4,317.10	4,029.60		
Welch-Cook-Beals.....		137.13		
Leonard Haimes.....	301.55	193.40		
Lothar Seewald.....	153.10	78.95		
Harry Cohon.....	2,217.30	2,218.15		

* * * With regard to all of the distributors herein before set out it is stipulated that the only offers made to all of such distributors are those figures appearing under the column "Advertising and/or Promotional Allowances". Further, that where nothing was shown to have been given under the aforesaid column no offer was made for any type of allowance. It is further stipulated that all of the distributors here and before named did take promotional allowances if offered.

14. The testimony of Boris Cohen (Tr. 8, et seq.) is that all the distributors who are stocking distributors are in competition with one another in their respective areas. The stocking distributors resell to retail outlets who resell to the public. Non-stocking distributors sell to door-to-door peddlers, operate as mail order houses, or sell to companies who use the products as gifts or incentives for salesmen. Mr. Cohen did, however, testify that four of the distributors described in the stipulation as non-stocking distributors did compete with stocking distributors. These were Manhattan Manufacturing, Horn Brothers, Wildermuth and Akorn (Tr. 29). While there appear to be some inconsistencies between the stipulation between counsel and the testimony of Boris Cohen, counsel for respondent asserted that this was not true (Tr. 37), and the examiner accepts the stipulation as the better evidence if any inconsistency exists.²

15. During 1959 and 1960, respondents paid substantial amounts of money or gave merchandise for prizes to a number of its stocking distributors. The money payments and the gifts were given in connection with gift shows put on by the distributor. The payments were either for space at the gift show to display respondents' prod-

² See *Phelps Dodge Mfg. Corp. v. F.T.C.*, 139 F. 2d 393, 397, (2nd Cir. 1943); 3 S.&D. 621.

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ucts or for space in catalogs which the distributors used to sell respondents' and others' products to their customers. The stipulation also shows that minimal amounts of money were credited to distributors for prizes at trade shows. There is no question but that these payments and gifts were given in connection with the promotion of the resale of respondents' products at these shows and in the catalogues.

During these same periods of time, there were other stocking distributors to whom no similar payments were made, offered or made available. It was stipulated that these distributors were in competition in reselling respondents' products with the ones who received monies or gifts. In addition, the record shows that four non-stocking distributors were in competition with the stocking distributors who received the payments or gifts in reselling respondents' products. These four non-stocking distributors received no payments or credits from the respondents, nor were any offered or made available to them.

16. The explanation given for these quite obvious discriminations was that the distributors who were paid nothing had no gift shows or catalogues in the years no payments were made to them (Tr. 10, 15, 18, 29). Boris Cohen also testified that respondents' policy and his instructions to his sales force were to pay distributors for participation in trade shows and distributor catalogues up to 2 per cent of the distributors' anticipated purchases (Tr. 11, 17). He further testified that it was a regular trade practice for his competitors to participate in such shows and catalogues, and that he might well lose a customer if he did not also participate (Tr. 27-28). Mr. Cohen also testified as follows:

Let me ask you, is the way these payments are generally arrived at, the customer comes to you and says, "I am putting out a catalog. A page will cost you fifty or sixty dollars. Do you want in? It's a good deal." Is this the way it is customarily done?

THE WITNESS: That's the way it is customarily done, that's correct. (Tr. 39)

He further testified that the amounts involved were of such a minimal nature that no records of them were even kept (Tr. 32-33).

17. The respondent has therefore defended on three grounds. First, that its policy was to offer 2 per cent to all stocking distributors, but that no payment was made where the distributor had no show or catalogue. This must be rejected. The stipulation between counsel unequivocally states, "Further, that where nothing was shown to have been given under the aforesaid column *no offer was made for any type of allowance.*" (Emphasis supplied.) The

crucial issue is not whether a payment was made, but whether similar payments were offered or made available to all competing customers. It has been stipulated that they were not, the examiner must take this at face value.

Second, while the payments actually made by respondent may not be of earth-shaking proportions, they range from \$11.15 to \$400, and number twenty-three (23) in the two years involved. They cannot be said to be *de minimis*.

Third, the testimony that respondents' competitors are making similar payments and that a customer might be lost if no payment was made is too vague and general to constitute a proper defense under 2(b) of the Clayton Act, as amended. The record contains no information as to what competitors of respondents paid to the distributors or even what competitors are involved. The respondents' payments appear to the examiner to be merely general promotion of respondents' products in an attempt to increase sales. *J. A. Folger & Co.* FTC Docket No. 8094, Nov. 14, 1962 [61 F.T.C. 1166].

18. As to respondent Windsor Metal Products, Inc., no evidence was adduced by counsel supporting the complaint to establish a violation of Section 2(d) by it. There was some general testimony from Boris Cohen that Windsor granted advertising allowances to its department store customers in the amount of \$50,000 in 1952 (Tr. 21-22). However, there was no evidence offered as to the identity of the department store accounts, the allowances paid to any of them, or that proportionally equal payments were not offered to other customers in competition with them in reselling Windsor products.

As to George Cohen, no evidence was adduced to show that he violated Section 2(d). The limited amount of evidence concerning him shows that his principal duties with respondent companies were to supervise manufacturing and production. He never had any responsibility for sales, nor did he approve the payment of any advertising allowances (Tr. 40-41). There is no evidence that he played any part in the formulation or carrying out of any of respondents' cooperative advertising practices or policies involved in this proceeding.

CONCLUSIONS

1. Respondents, All-Luminum Products, Inc., All-Luminum Sales Corp., Inc., corporations, and Boris Cohen, an individual, as found above have violated subsection (d) of Section 2 of the Clayton Act, as amended, by paying advertising allowances to certain of their distributors in the form of payments for advertising of respondents'

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products in such distributors' catalogues and giving gifts or granting credits for promotional activities in connection with trade shows conducted by such distributors. Like or similar payments, credits or gifts were not offered or made available on proportionally equal terms to other of respondents' distributors, stocking and non-stocking, who competed with the favored distributors in the resale of respondents' products.

2. The record contains no evidence that Windsor Metal Products, Inc., who sells respondents' products directly to retail outlets, violated subsection (d) of Section 2 of the Clayton Act, as amended, by the cooperative advertising payments which it made to such retail outlets.

3. There is no evidence in the record that individual respondent, George Cohen, participated in or can be held responsible for any of the acts or practices charged in the complaint.

ORDER TO CEASE AND DESIST

Counsel in support of the complaint in his proposed findings urges that all five of the respondents be placed under the broadest possible order covering both the respondents' sales through All-Luminum Sales, Corp., Inc., to distributors and Windsor Metal Products, Inc., direct to retailers. Counsel for respondent, on the other hand, urges no order should be entered, but that if one is, it should be in line with the Supreme Court *dicta* in the *Broch* case,³ and that the legitimate needs in this case can be best met by limiting the applicability of any order to the two All-Luminum companies in granting trade show and catalogue allowances to stocking distributor customers. The examiner is of the opinion that the order can neither be as broad as counsel in support of the complaint urge, nor as narrow as counsel for the respondent suggests.

The order cannot be properly limited to allowances paid to respondents' stocking distributors since the record establishes that at least four of respondents' non-stocking distributors who received or were offered nothing, were in competition with stocking distributors receiving allowances. Consequently, the order must be broad enough to include all of respondents' competing distributors both stocking and non-stocking.

While there is no evidence that respondents violated 2(d) in their dealings through the Windsor Company direct with retailers, nevertheless, the examiner is of the opinion that the order should run

³ *Henry Broch & Co. v. F.T.C.*, 368, U.S. 360 (1962).

against Windsor and cover its cooperative advertising practices with retail and department store customers. Boris Cohen is directly responsible both individually and as President of All-Luminum Sales for the 2(d) violations established in the record. He is also the President and the co-owner with his brother, George Cohen, of Windsor. He is in charge of sales by Windsor and formulates and is responsible for the cooperative advertising policies of Windsor. Since he must be held responsible for the violations by All-Luminum Sales in dealing with distributors, there is sufficient basis for making both him and Windsor subject to the order to cease and desist. Windsor is simply another corporation with the same ownership and officers as the other two corporate respondents. It merely sells the same products as All-Luminum Sales to a different class of customers. All are in reality a closely owned and controlled group subject to the policies established by Boris Cohen.⁴ Consequently, the examiner feels that the following order to cease and desist is appropriate.

It is ordered, That respondents, All-Luminum Products, Inc., a corporation, All-Luminum Sales Corp., Inc., a corporation, Windsor Metal Products, Inc., a corporation, their officers and directors, and Boris Cohen, individually, and as an officer of each such corporation, and their 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 of respondents' products, including aluminum outdoor casual furniture and folding tables, 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 respondents as compensation or in consideration for any services or facilities furnished by or through such customer, in connection with the processing, handling, sale or offering for sale of such products manufactured, sold or offered for sale by such respondents, 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 the charges in the complaint pertaining to George Cohen individually be dismissed.

⁴ See *F.T.C. v. Standard Education Society, et al.*, 302 U.S. 112, 120 (1937), 2 S.&D. 429.

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OPINION OF THE COMMISSION

NOVEMBER 7, 1963

By ELMAN, *Commissioner*:

The complaint in this matter charges respondents with violation of Section 2(d) of the Clayton Act, as amended. Respondents are All-Luminum Products, a corporation which manufactures aluminum outdoor casual furniture and folding tables; All-Luminum Sales Corp., another corporation, which sells the goods manufactured by All-Luminum Products to wholesalers, comprising "stocking jobbers", who maintain an inventory of such goods, and "non-stocking jobbers", who do not; Windsor Metal Products, a third corporation, which sells such goods to department stores and other retailers; and Boris Cohen and George Cohen, who own and control the three corporations. The hearing examiner found that George Cohen (the "inside", *i.e.*, manufacturing partner) had not participated in the formulation of respondents' sales policies and, accordingly, dismissed the complaint as to him. That aspect of the initial decision has not been appealed.

The hearing examiner in the initial decision also found that respondents had violated Section 2(d) by giving certain of their "stocking jobbers" catalogue and trade-show promotional allowances which were not made available by respondents to competing distributors on proportionally equal terms. At the same time, the examiner found that the evidence did not show that allowances furnished by respondent through Windsor Metal Products to retailers were violative of Section 2(d). These findings have not been appealed.

The order to cease and desist contained in the initial decision forbids respondents, including Windsor Metal Products, to make non-proportional allowances of any kind to any customer. Respondents have appealed the scope of this order, and have submitted a proposed form of order excluding Windsor and including only catalogue and trade-show allowances made to wholesale customers of respondents who maintain inventories of respondents' products. Since there is no evidence that suggests either that respondents have violated or are likely in the future to violate Section 2(d) in their transactions with retailers, or otherwise through Windsor, or that respondents have furnished or will furnish promotional allowances to wholesalers save in connection with catalogues and trade shows, the Commission finds insufficient justification for an order coextensive in breadth with the statute. On the other hand, the Commission finds no basis for distinguishing in the order between wholesale customers of respondents who maintain inventories, and those who do not.

Accordingly, the findings of fact and conclusions of law contained in the initial decision are adopted by the Commission, and the order to cease and desist has been modified in accordance with the views stated in this opinion.

In formulating the terms of an order to cease and desist, the Commission is not concerned with whether the order should be "broad" or "narrow" as such. The significant question, rather, is what kind of order will be most *effective* to "cure the ill effects of the illegal conduct, and assure the public freedom from its continuance" (*United States v. United States Gypsum Co.*, 340 U.S. 76, 88). The Commission's objective is to restrain unlawful acts and practices "whose commission in the future, unless enjoined, may fairly be anticipated from the [respondent's] conduct in the past" (*N.L.R.B. v. Express Publishing Co.*, 312 U.S. 426, 435). If an order coextensive in breadth with the statutory prohibition appears to be required for effective relief, it is the Commission's duty to enter such an order. That might be appropriate where, for example, the respondent's conduct was such as to support an inference that his violation of law might be repeated in a variety of ways, difficult to anticipate precisely, in the future. On the other hand, where the record in a particular case does not show a danger that the specific illegal act or practice found will recur in some other or difficult-to-define forms, a relatively narrow and specific order may suffice. In every case, the Commission possesses a "wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" (*Jacob Siegel Co. v. F.T.C.*, 327 U.S. 608, 611). This discretion will be exercised with an eye toward achieving practical results. Whether a "broad" or "narrow" order will be most effective depends, therefore, on the particular circumstances and needs of the case. For these reasons, the order entered in the instant case is not to be regarded as a general model or precedent for orders in other cases involving different circumstances and needs.

Commissioner MacIntyre dissented.

DISSENTING OPINION

NOVEMBER 7, 1963

By MACINTYRE, *Commissioner*:

The order entered by the majority is unduly narrow, limited as it is to advertising or other publicity services furnished in catalogues or other publications serving the purpose of a buying guide as well as in trade shows by those of respondents' customers who happen to be wholesalers, mail order distributors or catalogue houses.

Here, without citing *Transogram Company, Inc.*, Federal Trade Commission Docket No. 7978 (1962) [61 F.T.C. 629], the majority has in effect extended the holding in that case to a factual situation where it is not applicable. The holding in *Transogram* should be limited to the facts of that case; its dicta should be confined to those proceedings which in fact are characterized by a "slender 'bare bones' record", permitting little or no analysis of a respondent's past promotional activities. Although the violation of Section 2(d) documented here has been confined to catalogues and promotional payments for trade shows, the record suggests that the affiliated respondent corporations did not necessarily confine their advertising and promotional payments to these media. It is furthermore clear that the affiliated, closely held respondent corporations' promotional and advertising payments were not limited to those customers coming within the scope of the majority's order.

In effect, the majority of the Commission has ruled here that if a record does not affirmatively suggest that violations of Section 2(d) may be expected in connection with other categories of customers or media than those involved in past violations, then the order should proscribe only the precise acts previously undertaken in connection with the same classes of customers. In *Transogram*, however, we specifically disavowed the contention that limitation of the order's provisions to certain classes of customers was required by the need for specificity. This need we held is satisfied if the practices proscribed are defined with sufficient clarity.

The order here limited to catalogues or other publications serving as buying guides and trade shows does not adequately proscribe possible "variations on the basic theme." See *Vanity Fair Paper Mills, Inc. v. Federal Trade Commission*, 311 F. 2d 480 (2d Cir. 1962). Furthermore, it is inconsistent with the Commission's opinion in that case¹ holding since Section 2(d) covers a limited area in which the forms of violation are like and related, that an order under the statute should not, in most instances, be confined to the exact violations found. The proper order, in my opinion, would embrace "advertising or promotional display services or facilities and like or related practices," without limitation as to the media involved. That definition has only recently won judicial approval; indeed, it was promulgated by the Second Circuit in *Vanity Fair Paper Mills, Inc. v. Federal Trade Commission*, *supra*, a case involving issues similar in many respects to those with which we are confronted here.

¹ *Vanity Fair Paper Mills, Inc.*, Docket No. 7720 (1962), [60 F.T.C. 568], modified 311 F. 2d 480 (2d Cir. 1962).

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Final Order

FINAL ORDER

This matter has been heard by the Commission on respondents' appeal from the initial decision of the hearing examiner. The Commission has rendered its decision, granting the appeal in part but denying it in all other respects. The Commission has determined, for the reasons stated in the accompanying opinion, that the order to cease and desist contained in the initial decision should be modified and, as modified, issued as the Commission's final order. Accordingly,

It is ordered, That respondents, All-Luminum Products, Inc., a corporation, All-Luminum Sales Corp., Inc., a corporation, their officers and directors, and Boris Cohen, individually and as an officer of each such corporation, and their 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 aluminum outdoor casual furniture and folding tables, and any other products manufactured, sold or offered for sale by respondents, do forthwith cease and desist from:

Paying, or contracting for the payment of, anything of value to or for the benefit of

(1) any wholesale customer of respondents whether or not such customer maintains an inventory of respondents' products, or

(2) any mail-order distributor or catalogue house that is a customer of respondents,

as compensation for or in consideration of any services or facilities consisting of advertising or other publicity, furnished by or through such customer,

(1) in a catalogue or other publication serving the purpose of a buying guide, or

(2) in a trade show,

in connection with the processing, handling, sale or offering for sale of any products manufactured, sold or offered for sale by respondents, unless such payment or consideration is made available on proportionally equal terms to all other such customers competing in the distribution of such products.

It is further ordered, That the complaint be dismissed as to George Cohen individually and Windsor Metal Products, Inc., a corporation.

It is further ordered, That respondents named in the order to cease and desist shall, within sixty (60) days after service upon them of

