
IN THE MATTER OF
MOHASCO INDUSTRIES, INC.

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

Docket 7421. Complaint, Feb. 26, 1959—Decision, Feb. 10, 1964

Consent order requiring the largest manufacturer of rugs and carpets in the
United States, with manufacturing facilities in six States, to cease dis-

*Reported as amended by order of April 2, 1964, which amended the time in which
respondent is required to file a report of compliance.

Complaint

64 F.T.C.

criminating in price among retailers who compete in reselling its rugs and carpets by means of its annual cumulative quantity discount system, in violation of Sec. 2(a) of the Clayton Act.

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 (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Mohasco Industries, Inc., is a corporation organized, 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 57 Lyon Street in the city of Amsterdam, State of New York. Respondent corporation is the result of the merger on December 31, 1955, of Alexander Smith, Inc. and Mohawk Carpet Mills, Inc.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets under the separate product lines of Mohawk and Alexander Smith. Respondent is the largest firm in the rug and carpet industry, with sales in 1957 in excess of \$98,000,000 and manufacturing facilities located in the six States of New York, Massachusetts, South Carolina, Mississippi, Delaware and Pennsylvania.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its rugs and carpets, when sold for use, consumption, or resale, to be shipped from its manufacturing plants in the aforesaid States to purchasers thereof located in various other States of the United States and maintains and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent in the course and conduct of its business, has discriminated in price between different purchasers of its rugs and carpets of like grade and quality, by selling said products at higher and less favorable net purchase prices to some purchasers than the same are sold to other purchasers who have been and are in competition with the favored purchasers.

PAR. 5. The following examples are illustrative of respondent's discriminatory pricing practices.

709

Complaint

Respondent now has, and for the past several years has had in effect, an annual cumulative quantity discount system ranging from one to five percent, based on the amount of the customer's annual net purchases as follows:

Mohawk Line

<i>Annual purchases</i>	<i>Discounts (percent)</i>
Up to \$4,999.....	0
\$5,000 to \$9,999.....	1
\$10,000 to \$14,999.....	1½
\$15,000 to \$24,999.....	2
\$25,000 to \$39,999.....	2½
\$40,000 to \$54,999.....	3
\$55,000 to \$69,999.....	3½
\$70,000 to \$84,999.....	4
\$85,000 to \$99,999.....	4½
\$100,000 and over.....	5

Alexander Smith Line

<i>Annual purchases</i>	<i>Discounts (percent)</i>
Up to \$4,999.....	0
\$5,000 to \$9,999.....	1
\$10,000 to \$14,999.....	1½
\$15,000 to \$24,999.....	2
\$25,000 to \$34,999.....	2½
\$35,000 to \$44,999.....	3
\$45,000 to \$59,999.....	3½
\$60,000 to \$74,999.....	4
\$75,000 to \$89,999.....	4½
\$90,000 and over.....	5

Respondent's aforescribed annual cumulative quantity discount systems result in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedules. Purchasers of respondent's products for competitive resale unable to reach an annual purchase volume of \$5,000, for example, receive no volume discounts on their purchases and thus have a significant buying price disadvantage.

Moreover, the competitive effect of the resulting net price differences becomes even more apparent in connection with respondent's application of the above discount schedules to chain stores such as, for example, The May Department Stores Company and Allied Stores Corporation. Respondent allows said chain purchasers to combine the purchase volumes of their various outlets so as to qualify for the maximum 5% discount allowed. In many instances the purchase volumes of the different individual stores of the chain are not sufficient to warrant any discount at all, but because of the policy of the respondent in granting

the rate of discount on the combined purchase volumes of all the chain outlets, each individual store is allowed the maximum discount of approximately 5%.

For example in 1956, the Allied chain purchased a gross total of \$706,189.61 from respondent's Mohawk Division and received an approximate 5% rebate of \$33,897.12 based on total net shipments. Of the 38 participating stores, the purchase volumes of 15 of these stores failed to qualify for any rebate and nine qualified for only the minimum rebate of 1%. Of the remaining stores, only one qualified for the maximum rebate allowed to all 38 stores.

Respondent's Smith Division in 1956 sold a gross total of \$254,743.81 to the Allied chain and paid an approximate 5% rebate of \$11,243.67, based on net purchases. Based on individual purchase volumes, 21 of the 32 participating Allied stores failed to qualify for any rebate and none qualified for the approximate 5% rebate allowed to all 32 stores.

In 1956, The May Department Stores Company purchased a gross total of \$284,865.60 from respondent's Mohawk Division and received an approximate 5% rebate of \$14,243. Only one of the 11 individual May stores participating qualified for the approximate 5% rebate on the basis of individual purchase volumes, and four May stores on an individual basis qualified for no rebate. Purchases from respondent's Smith Division by The May chain were only \$47,526 in 1956 but a rebate of \$1,847, or approximately 4% was paid. This aggregate rebate is nearly twice the size of the \$934.64 rebate which would have been paid on the basis of the actual purchase volumes of the individual stores.

In many instances respondent's non-chain customers are purchasing individually from respondent in considerably greater volume than the individual chain store with whom they compete, and in so doing receive either no discount, or at best a low bracket discount corresponding with their actual volume of purchases, while the competitive individual chain store is allowed the maximum discount of 5%. The products sold under respondent's different product lines are of like grade and quality in its respective product line, and these independent non-chain customers purchase the same grade and quality of merchandise from respondent as do its chain store customers. In many instances the individual chain stores and the independently owned stores are located in the same city or metropolitan area and both the chain and non-chain stores are in active and constant competition with and among and between each other for the consumer trade.

Specific illustrations of representative net price differences occasioned between the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during 1956, are as follows:

Customer	Purchase volume	Rebate	Percent of rebate
CLEVELAND TRADE AREA			
Mohawk Division:			
The May Co.-----	\$33, 865	\$1, 626	4. 80
Bubnick Carpet Co.-----	52, 041	1, 499	2. 88
Bailey Dept. Store-----	21, 627	830	3. 84
Factory Furniture-----	15, 932	306	1. 92
Sterling-Lindner-Davis (Allied)----	5, 765	276	4. 79
Wm. Taylor Son & Co. (May)-----	225	11	4. 89
BALTIMORE TRADE AREA			
Alexander Smith Division:			
The May Co.-----	6, 166. 91	205. 05	3. 33
Brager-Eisenberg.-----	11, 720. 61	167. 02	1. 43

PAR. 6. The effect of the discriminations in price by respondent as hereinbefore set forth may be substantially to lessen competition in the lines of commerce in which the purchasers receiving and those denied the benefits of the more favorable prices are engaged, and to injure, destroy or prevent competition between purchasers receiving the benefit of said more favorable prices, and the purchasers from whom such more favorable prices are withheld.

PAR. 7. The aforesaid discriminations in price by respondent as hereinabove alleged and described constitute violations of subsection (a) of Section 2 of the aforesaid Clayton Act as amended.

Mr. Eldon P. Schrup and *Mr. Robert G. Cutler* for the Commission.

Hughes, Hubbard, Blair & Reed, by *Mr. Edward S. Redington*, New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated February 26, 1959, the respondent is charged with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

Order

64 F.T.C.

On April 7, 1960, the respondent and its attorney entered into an agreement with counsel supporting the complaint for a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it 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.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

This agreement is entered into subject to the condition that the initial decision based thereon shall be stayed by the Commission and shall not become the decision of the Commission unless and until the Commission disposes of Docket Nos. 7420, 7631, 7632, 7633, 7634, 7635, 7636, 7637, 7638, 7639 and 7640, by orders to cease and desist in substantially the same form as set forth herein, or by other appropriate order to cease and desist or of dismissal.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Mohasco Industries, 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 57 Lyon Street, Amsterdam, New York.

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

ORDER

It is ordered, That respondent Mohasco Industries, Inc., a corporation, its officers, agents, representatives and employees, directly or

709

Final Order

through any corporate or other device, in connection with the sale of rugs and carpets in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, by cumulative volume discount or otherwise, in the price of rugs and carpets of like grade and quality, by selling to any purchaser at net prices lower than the net price charged any other purchaser competing in fact with such favored purchaser in the resale and distribution of such rugs and carpets.

For the purpose of determining "net price" under the terms of this order, there shall be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

FINAL ORDER*

The Commission, by order issued August 19, 1960, having extended until further order of the Commission the time within which the initial decision of the hearing examiner would otherwise become the decision of the Commission, pursuant to certain conditions contained in paragraph 8 of the consent agreement to cease and desist; and

The Commission having determined that the aforesaid conditions have been fulfilled and that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, filed July 25, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the above-named respondent shall, within sixty (60) days after the expiration of time allowed for filing a petition for review, if no such petition has been duly filed within such time by respondents in Docket 7634, Docket 7635 or Docket 7639, 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.

It is further ordered, That if petition for review is duly filed in Docket 7634, Docket 7635 or Docket 7639, then the time for filing a report of compliance shall begin to run de novo from the latest date of any final judicial determination in any such appellate review.

*Reported as amended by order of April 2, 1964, which amended the time in which respondent is required to file a report of compliance.

Complaint

64 F.T.C.

IN THE MATTER OF
THE MAGEE CARPET COMPANY

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

Docket 7631. Complaint, Oct. 28, 1959—Decision, Feb. 10, 1964

Consent order requiring a manufacturer of rugs and carpets in Bloomsburg, Pa., to cease discriminating in price among retailers who compete in reselling its rugs and carpets by means of its annual cumulative quantity discount system, in violation of Sec. 2(a) of the Clayton Act.

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 (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, The Magee Carpet Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the city of Bloomsburg, Pennsylvania.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets. Respondent is a substantial factor in the rug and carpet industry, with sales in 1958 in excess of \$32,893,000 and manufacturing facilities located in Bloomsburg, Pennsylvania.

PAR. 3. In the course and conduct of its business respondent now causes, and for some time last past has caused, its rugs and carpets, when sold for use or resale, to be shipped from its manufacturing plant in the aforesaid State to purchasers thereof located in various other States of the United States and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said rugs and carpets in commerce as "commerce" is defined in the aforesaid Clayton Act.

PAR. 4. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its rugs and carpets of like grade and quality, by selling said products at higher and less favorable net purchase prices to some purchasers than the