
IN THE MATTER OF
ROXBURY CARPET COMPANY ET AL.

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

Docket 7637. Complaint, Oct. 28, 1959—Decision, Feb. 10, 1964

Consent order requiring three associated manufacturers of rugs and carpets located in Saxonville, Mass., and in Chattanooga, Tenn., to cease discriminating in price among retailers who compete in reselling their rugs and

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

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carpets by means of their 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 parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are 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, Roxbury Carpet Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at 2 Central Street, Saxonville, Middlesex County, State of Massachusetts. Said respondent is the parent holding company for its two wholly owned subsidiaries Roxbury Southern Mills, Inc., and M. J. Whittall Associates, Inc.

Respondent, Roxbury Southern Mills, Inc., is a Tennessee corporation, with its principal office and manufacturing facilities located at 4900 Hooker Road in the city of Chattanooga, State of Tennessee. Respondent, M. J. Whittall Associates, Inc., is a Massachusetts corporation located at the same address of respondent Roxbury Carpet Company and doing business by permission of said holding company under the name of Roxbury Carpet Company.

Respondent M. J. Whittall Associates, Inc., has two manufacturing facilities, the Roxbury Division in Saxonville, Massachusetts and the Whittall Division, in Worcester, Massachusetts. Respondent M. J. Whittall Associates, Inc., maintains a selling organization and develops all policy on sales and issuance of rebates for itself and its affiliate Roxbury Southern Mills, Inc.

PAR. 2. Respondents are engaged as aforesaid in the manufacture, sale and distribution of rugs and carpets. Respondents are a substantial factor in the rug and carpet industry, with sales in 1958 in excess of \$23,219,000 and manufacturing facilities located in Massachusetts and Tennessee.

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

PAR. 4. Respondents, in the course and conduct of their business, have discriminated in price between different purchasers of their 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 purchasers paying the higher prices.

Respondents sell as aforesaid to direct purchasers in the wholesale trade and by and through such means to indirect purchasers in the retail trade. Respondents in making said indirect sales control and set the sales price to the retailer-purchaser by the furnishing of published price lists setting forth the terms and conditions of sale for their said products. Respondents in said indirect sales also furnish and have in effect a published discount plan under which they allow rebates to the retailer-purchaser in the form of merchandise credits to be applied by the retailer on purchases made from or through the wholesaler of respondents' said products.

PAR. 5. The following examples are illustrative of respondents' discriminatory pricing practices between and among the retailer-purchasers of their rugs and carpets.

Respondents now have, and for the past several years have 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:

<i>Annual purchases</i>	<i>Discount (percent)</i>
Up to \$5,999-----	0
\$6,000 to \$12,499-----	1
\$12,500 to \$24,999-----	2
\$25,000 to \$39,999-----	3
\$40,000 to \$59,999-----	4
\$60,000 and over-----	5

Respondents' aforescribed annual cumulative quantity discount system results in discriminatory net sales prices as between competitive purchasers in the different volume and discount brackets of said schedule. Purchasers of respondents' products for competitive resale unable to reach an annual purchase volume of \$6,000, 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 respondents' application of the above discount schedule to chain store organizations. Respondents allow said chain purchasers to combine the purchase volumes of their various stores so as to qualify for the higher discount allowed on the larger aggregate total of such purchase volume. In many instances the separate purchase volumes of the different individ-

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ual stores of the chain are not sufficient to warrant such higher discount, but because of the policy of the respondents in granting the rate of discount on the combined purchase volumes of all the chain stores, each individual store is allowed this higher discount.

In many instances respondents' non-chain customers are purchasing individually from respondents 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 aforescribed higher discount. The products sold under respondents' various product lines are of like grade and quality in their respective lines, and these independent non-chain customers purchase the same grade and quality of merchandise from respondents as do their 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 and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondents in commerce during 1958, are as follows in but two sample areas:

Customer	Purchase volume ²	Percent of rebate
Akron, Ohio trade area: ¹		
A. Polsky Co. (chain store)	\$5, 921	5
Sokol Furniture Co.	15, 092	2
Weinrich Furniture Co.	7, 236	1
Super Floors	4, 197	0
Cleveland, Ohio trade area: ¹		
The May Co. (chain store)	10, 919	5
W. Levy Carpet Co.	26, 242	3
Melzer Furniture Co.	13, 726	2
Ross Furniture Co.	4, 179	0

¹ In the Akron, Ohio area 53 different retailer customers of respondents purchased \$128,797.00 of said commodities during 1958. Of this number only 9 received discounts from respondents totaling \$1,245.36. In the Cleveland, Ohio area 247 different retailer customers of respondents purchased \$504,611.00 of said commodities during 1958. Of this number only 28 received discounts from respondents totaling \$5,536.80. (Based on temporary 9-month period during 1958 when volume discount schedule was 1% on \$4,500, 2% on \$9,375, 3% on \$18,750, 4% on \$30,000 and 5% on \$45,000 and over. Respondents on October 31, 1958 reverted to the normal schedule shown supra.)

² Purchase volume determines rebate percentage. Rebate percentage is then applied to dollar amount of purchase volume remaining after deduction of cash discounts for payments within specified time periods.

PAR. 6. The effect of respondents' aforesaid discrimination in price between the said different purchasers of their said products of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondents and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondents or said favored purchasers.

PAR. 7. The aforesaid discriminations in price by respondents 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 Commission.
Hale and Dorr, by Mr. George H. Foley, Boston, Mass. for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1959, the respondents are charged with violating the provisions of subsection (a) of section 2 of the Clayton Act, as amended.

On April 5, 1960, the respondents and their attorney entered into an agreement with counsel supporting the complaint for a consent order. On June 27, 1960, the parties entered into a supplemental agreement.

Under the foregoing agreement, the respondents admit 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 respondents 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 respondents that they have 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, 7421, 7631, 7632, 7633, 7634, 7635, 7636, 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 complaint insofar as it concerns the allegation of "primary line injury", namely, to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, should be dismissed on the grounds that the evidence at hand in the light of subsequent developments is insufficient to substantiate such allegation.

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 Roxbury Carpet Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 2 Central Street, Saxonville, Massachusetts.

Respondent Roxbury Southern Mills, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 4900 Hooker Road, Chattanooga, Tennessee.

Respondent M. J. Whittall Associates, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 2 Central Street, Saxonville, Massachusetts.

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

ORDER

It is ordered, That respondents Roxbury Carpet Company, a corporation, Roxbury Southern Mills, Inc., a corporation, and M. J. Whittall Associates, Inc., a corporation, their officers, agents, representatives and employees, directly or 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.

It is further ordered. That the allegation in the complaint to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondents are engaged, or to injure, destroy or prevent competition with said respondents, be dismissed.

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 each of the above-named respondents 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 each 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