

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 of any final judicial determination in any such appellate review.

IN THE MATTER OF
THE FIRTH CARPET COMPANY

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

Docket 7638. Complaint, Oct. 28, 1959—Decision, Feb. 10, 1964

Consent order requiring a manufacturer of rugs and carpets with plants in New York, North Carolina, South Carolina, and Puerto Rico, to cease dis-

*Reported as amended by order of April 2, 1964, which amended the time in which respondents are 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, The Firth Carpet Company, 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 located at 295 Fifth Avenue in the City of New York, State of New York. Respondent, The Firth Carpet Company, owns 100% of the common stock of Firth Industries, Inc., a New York corporation located at the same address as the respondent. Firth Industries, Inc. was established to handle the sale of Firth acrilan carpets but its sales activities have been terminated by the respondent and it is no longer active.

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 a sales volume in 1958 in excess of \$22,938,000 and manufacturing plants located in Auburn, New York, Firthcliffe, New York, Newburgh, New York, Burnsville, North Carolina, Laurens, South Carolina and Mayaguez, Puerto Rico.

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 plants in the aforesaid States and Commonwealth 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 same are sold to other purchasers who have been and are in competition with the purchasers paying the higher prices.

Respondent sells as aforesaid to direct purchasers in the wholesale trade and by and through such means to indirect purchasers in the retail trade. Respondent in making said indirect sales controls and sets the sales price to the retailer-purchaser by the furnishing of published price lists setting forth the terms and conditions of sale for its said products. Respondent in said indirect sales also furnishes and has in effect a published discount plan under which it allows 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 respondent's said products.

PAR. 5. The following example is illustrative of respondent's discriminatory pricing practices between and among the retailer-purchasers of its rugs and carpets.

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 total annual net purchases of its rugs and carpets as follows:

<i>Annual purchases</i>	<i>Discount (percent)</i>
Up to \$4,999-----	0
\$5,000 to \$8,499-----	1
\$8,500 to \$13,499-----	1½
\$13,500 to \$19,999-----	2
\$20,000 to \$27,999-----	2½
\$28,000 to \$39,999-----	3
\$40,000 to \$49,999-----	3½
\$50,000 to \$62,499-----	4
\$62,500 to \$74,999-----	4½
Over \$75,000-----	5

Respondent's 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 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 schedule to individual chain stores whose separate purchase volume reaches \$5,000 or over.

Respondent allows said chain purchasers to combine the purchase volume of these 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 individual stores of the chain are not sufficient to warrant such

Complaint

64 F.T.C.

higher discount, but because of the policy of the respondent in granting the rate of discount on the combined purchase volumes of all such chain stores, each of these individual stores is allowed this higher discount.

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 aforescribed higher discount. The products sold under respondent's 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 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 and among various but not all of the said favored and non-favored competing customers on commodities of like grade and quality sold by respondent in commerce during 1958, are as follows in but two sample trade areas.

Customer	Purchase volume ²	Percent of rebate
Akron, Ohio, trade area: ¹		
M. O'Neil Co. (chain store).....	\$6, 156. 02	5
A. Polsky (chain store).....	10, 872. 55	4
H. M. Strough Co.....	14, 847. 46	2
Robert L. Hunker, Inc.....	5, 572. 41	1
Harding Furniture.....	4, 847. 66	0
Washington, D.C., trade area: ¹		
Hecht Co. (chain store).....	23, 359. 32	5
Lansburgh's (chain store).....	13, 037. 06	5
Stanley Lloyd, Inc.....	13, 443. 97	1. 5
Wm. E. Miller.....	5, 635. 31	1
Barnes & Kimmel.....	4, 508. 58	0

¹ In the Akron, Ohio area 21 different retailer customers of respondent purchased \$125,726.61 of said commodities during 1958. Of this number only 8 customers received discounts from the respondent totaling \$2,495.77. In the Washington, D.C. area 51 different retailer customers of respondent purchased \$355,393.79 of said commodities during 1958. Of this number only 18 received discounts from the respondent totaling \$9,217.02.

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

PAR. 6. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its 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 respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent or said favored purchasers.

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. White & Case, by Mr. Thomas Kiernan, New York, N.Y., for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated October 28, 1959, the respondent is charged with violating the provisions of subsection (a) of Section 2 of the Clayton Act, as amended.

On April 21, 1960, the respondent and its attorney entered into an agreement with counsel supporting the complaint for a consent order. On June 7, 1960, the parties entered into a supplemental agreement.

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, 7421, 7631, 7632, 7633, 7634, 7635, 7636, 7637, 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 respondent is engaged, or to injure, destroy or prevent competition with said respondent, 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 this proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order is issued.

1. Respondent The Firth Carpet Company 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 295 Fifth Avenue, New York, 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 The Firth Carpet Company, a corporation, its 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 respondent is engaged, or to injure, destroy or prevent competition with said respondent, 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 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.
