

Docket 7654, Docket 7655 or Docket 7659, 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
CABIN CRAFTS, INCORPORATED

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

Docket 7639. Complaint, Oct. 28, 1959—Decision, Feb. 10, 1964

Order requiring a manufacturer of rugs and carpets in Dalton, Ga., to cease discriminating in price among competing retailers in violation of Sec. 2(a) of the Clayton Act by means of a cumulative annual quantity discount system.

COMPLAINT

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

*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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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, Sec. 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 Cabin Crafts, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office located in the City of Dalton, State of Georgia.

PAR. 2. Respondent is engaged in the manufacture, sale and distribution of rugs and carpets. Respondent is a substantial factor in the carpet industry with a sales volume in 1957-58 fiscal year in excess of \$16,900,000 and manufacturing plants located in Dalton, Georgia.

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

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 two and one-half 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 \$9,999.....	0
\$10,000 to \$19,999.....	1
\$20,000 to \$34,999.....	1½
\$35,000 to \$49,999.....	1½
\$50,000 or more.....	2½

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 \$10,000, for example, receive no volume discounts on their purchases and thus have a significant buying price disadvantage. The products sold under respondent's various product lines are of like grade and quality in their respective lines and in many instances the aforesaid favored and non-price favored purchasers of respondent's said products are located in the same city or metropolitan area and 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 ¹	Percent of rebate
Cleveland, Ohio trade area:		
Halle Bros., Inc.....	\$23, 163. 59	1. 50
J. H. Boesch Company, Inc.....	11, 441. 56	1
Roberts Carpet Co.....	6, 707. 84	0
Ecker Shane Furniture Co.....	4, 398. 49	0
Washington, D.C. trade area:		
Diener's Inc.....	50, 608. 96	2. 50
Stanley Lloyd, Inc.....	41, 428. 74	2
Furniture Classics, Inc.....	23, 208. 15	1. 50
Wellington House.....	12, 628. 44	1
Cardwell's Inc.....	9, 400. 83	0
Revere Furniture & Equip. Co.....	8, 235. 97	0

¹ 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 aforesaid, 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.

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OPINION OF THE COMMISSION

FEBRUARY 10, 1964

By DIXON, *Commissioner*:

Cabin Crafts, Incorporated, the respondent herein, is a Georgia corporation engaged in the manufacture, sale, and distribution of tufted rugs and carpets.¹ The complaint, issued on October 28, 1959, charged respondent with unlawfully discriminating in price between different competing purchasers of its rugs and carpets of like grade and quality, in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.² Specifically, it was charged that respondent discriminated by selling to some purchasers at higher net prices than to others through the use of a cumulative, quantity discount system. The discount available, which was computed on the basis of the total annual purchases, ranged from one to two and one-half percent. The complaint further charged that the utilization of this system may substantially lessen competition or tend to create a monopoly in the lines of commerce in which respondent is engaged and in which the favored retailers compete. The matter is presently before the Commission on complaint counsel's appeal from the hearing examiner's initial decision dismissing the complaint. The examiner's dismissal was predicated upon his conclusion that respondent's discriminatory prices were made in good faith to meet equally low prices of competitors within the meaning of Section 2(b) of the above-mentioned Act.

The parties entered into a stipulation for the purposes of this proceeding in which respondent admitted engaging in interstate commerce, as "commerce" is defined in the Clayton Act, and in the course of such commerce, selling carpets of like grade and quality within the continental United States directly to competing retailers at net prices

¹ This is one of twelve similar proceedings brought against major carpet manufacturers. At this juncture, an order to cease and desist has issued against only one manufacturer, *James Lees and Sons Company*, Docket No. 7640, effective September 8, 1961 [59 F.T.C. 418]. Eight of the eleven remaining cases have been settled by the negotiation of consent orders to cease and desist, and the Commission is today approving and adopting these orders as the orders of the Commission. The consenting respondents are: *Bigelow-Sanford Carpet Company, Inc.*, Docket No. 7420 [p. 704 herein]; *Mohasco Industries, Inc.*, Docket No. 7421 [p. 709 herein]; *The Magee Carpet Company*, Docket No. 7631 [p. 716 herein]; *C. H. Masland & Sons*, Docket No. 7632 [p. 721 herein]; *The Beattie Manufacturing Company*, Docket No. 7633 [p. 727 herein]; *A. & M. Karagheusian, Inc.*, Docket No. 7636 [p. 751 herein]; *Rowbury Carpet Company, et al.*, Docket No. 7637 [p. 757 herein]; and *The Firth Carpet Company*, Docket No. 7638 [p. 793 herein].

In addition to the instant proceeding, there were formal adjudicative hearings in *Callaway Mills Co., et al.*, Docket No. 7634 [p. 732 herein], and *Philadelphia Carpet Company, et al.*, Docket No. 7635 [p. 762 herein]; and these two matters were also decided this day by the Commission.

² 49 Stat. 1526 (1936); 15 U.S.C. 13(a) (1958).

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calculated by the following retroactive, cumulative, annual, quantity discount system:

<i>Aggregate annual purchases</i>	<i>Discount (percent)</i>
Up to \$9,999-----	0
\$10,000 to \$19,999-----	1
\$20,000 to \$34,999-----	1½
\$35,000 to \$49,999-----	2
\$50,000 or more-----	2½

The stipulation further provided that in trading areas in which respondent sold its aforesaid products, the effect of the purchase price differential caused by the annual cumulative quantity discount system “* * * ‘may be to substantially lessen competition * * * or to injure, destroy, or prevent competition,’ among and between respondent’s customers so purchasing said carpets and rugs at the resulting higher and lower net prices within the meaning of Section 2(a) of the amended Clayton Act.” Finally, the parties agreed that respondent would not contest the sufficiency of the stipulated facts as constituting a prima facie case, nor offer evidence in opposition to the prima facie case. As a result of this stipulation, the only issue before the examiner and the only issue presently before the Commission is the sufficiency of respondent’s proffered evidence to establish the good faith, meeting competition defense set forth by Section 2(b) of the amended Clayton Act.

As background for its meeting competition defense, respondent introduced evidence tracing the history of the volume discount or rebate system. Prior to 1950, the vast majority of carpets were woven. In that process, the backing and surface of the carpet are manufactured at the same time. The woven market was dominated by a group of so-called “old line” manufacturers, and entry into that market was limited. There have been no new manufacturers of woven carpet since the late 1920’s. Most of the companies producing woven carpet employed the annual discount system until 1939, when all simultaneously discontinued the practice. In 1941, the Department of Justice obtained a consent decree enjoining fourteen of the woven carpet manufacturers from conspiring to discontinue the volume allowances. *United States v. Institute of Carpet Manufacturers of America et al.*, 1940-1943 CCH Trade Cases #56097 (S.D.N.Y. 1941). Following this decree, the rebates or discounts were uniformly reinstated.

In 1950, certain carpet manufacturers began to produce tufted carpet in commercial or large widths for the first time. The tufted process, in which the yarn forming the surface is punched through a previously prepared backing in a continuous loop formation, permits more rapid production of carpets than the woven process. This development resulted in the formation of the tufted market, which since that time has continuously expanded both from the standpoint of the

amount of carpet produced and the number of manufacturers in the market.

The "old line" manufacturers of woven carpets began the production of tufted carpets in 1951. In so doing, they projected their quantity discount system into that field and combined both woven and tufted carpet sales in arriving at the maximum discount. Those manufacturers engaged solely in producing tufted carpet did not at first employ the volume discount system. It was not until 1955 that Callaway Mills became the first exclusive tufter to grant volume rebates or discounts. Respondent's system was adopted shortly thereafter and became effective in January of 1956.

Respondent presented its meeting competition defense through a single witness, who had been employed for nine and one-half years as respondent's vice president in charge of sales. Prior to joining respondent, this witness had been associated for over twenty years with a competing carpet manufacturer in various sales capacities. He testified that in 1954 he suggested for the first time that adoption of a cumulative quantity discount system was mandatory to "hold our position and further increase our position in the industry." Such action was necessary, according to this witness, because the size of some of their accounts had grown to the level at which competitors were granting the annual rebate, and the absence of such a program was hindering respondent's attempts to further expand the size of these accounts. In addition, this witness indicated a possibility that these particular accounts could not be maintained at their present size in the absence of rebates. However, the decision to grant rebates was not made until December of 1955. According to respondent's witness, two factors influenced the ultimate decision to adopt the system. First, there was the continuing problem that some accounts had reached the size at which competitors were granting annual discounts. Secondly, Callaway Mills adopted a discount system. Prior to that time, no manufacturer engaged solely in the production of tufted carpets granted rebates. Later in his testimony, this witness stated that sales declined in 1955. Respondent now takes the position that said decline was also a contributing factor in the decision. However, respondent failed to establish the extent of the decline. Further, it is not clear from the evidence whether industrywide sales decreased, remained stationary, or increased at this time.³

Respondent stresses other factors as indicative that its system was adopted in good faith to meet the prices of competitors. Its schedule

³ There was evidence that the size of the tufted carpet market had increased between 1950 and the time of the hearing. Although respondent's share of that market has decreased, its sales over the entire period have increased.

of rebates, which ranged from one to two and one-half percent, was not as generous as the programs of its competitors, many of which granted a maximum of five percent. In addition, respondent's system required that a customer purchase a minimum of \$10,000 worth of goods before qualifying for a discount, while the beginning bracket for the remainder of the industry was \$5,000. Further, respondent made no public announcement of the adoption of its system. Instead, salesmen informed only those customers who inquired whether rebates were granted. Finally, respondent does not permit customers with several branch stores to cumulate the purchases of all stores to qualify for the volume discount, as is permitted by most competitors, nor are buying groups allowed to pool their purchases in computing their discount.

Counsel in support of the complaint contend that much of the above testimony was adduced over objections that the questions were leading or that the answer would be hearsay. Pretermittting these questions, we are nevertheless compelled to reject respondent's theory that the system was adopted in good faith to meet the lower prices of competitors for essentially the same reasons as enunciated in *Callaway Mills*, Docket No. 7634, [p. 732 herein] decided this day. As stated therein, it is our opinion that the proponent of the meeting competition defense, a defense which permits systematic price discrimination injurious to small retailers when successfully interposed, bears the burden of proof and should be held to a strict accounting that its discriminatory prices were, in fact, set to meet the equally low prices of competitors. Contrary to the decision of the examiner, we are not of the opinion that the instant respondent has fulfilled the required standard.

One of the elements of the Section 2(b) defense is that of good faith. A respondent may adopt a pricing practice utilized by a competitor, but if through that practice said respondent undercuts the prices which he is purportedly meeting, he is not acting in good faith and may be denied the refuge of the defense. *Cf. Standard Oil Co. v. Federal Trade Commission*, 340 U.S. 231 (1951). Among other things, therefore, a respondent must establish his good faith by evidence that he is doing no more than meeting competitors' prices by setting prices of his own equivalent to those he is purportedly meeting. In a case such as that presently before us, where the net prices are determined by way of rebates or discounts, a comparison of the discounts offered is meaningless without some knowledge of the prices and the quality of merchandise to which the discounts are applied. Stated otherwise, it is necessary for us to compare net prices offered

by respondent with the net prices of its competitors which it was purportedly meeting to determine the existence of the requisite good faith. To accomplish this result, we must relate the discounts to the prices of comparable merchandise to determine whether respondent's net price was lower than those of competitors. Such a result is impossible without the price lists of respondent and its relevant competitors.

Further, respondent must offer evidence of the quality of its goods as compared to that of its competitors. Both the courts and the Commission have consistently denied the shelter of the defense to sellers whose product, because of intrinsic superior quality or intense public demand, normally commands a price higher than that usually received by sellers of competitive goods. For example, the defense will not lie when the price of Lucky Strikes is dropped to the level of a "poorer grade of cigarettes," *Porto Rican American Tobacco Co. v. American Tobacco Co.*, 30 F. 2d 234, 237 (2d Cir. 1929), *cert. denied*, 279 U.S. 858 (1929); or when the price of Budweiser beer is dropped to match the price of "nonpremium" local beers, *Anheuser-Busch, Inc.*, 54 F.T.C. 277, *set aside for other reasons*, 265 F. 2d 677 (7th Cir. 1959), *rev'd*, 363 U.S. 536 (1960), *again set aside for other reasons*, 289 F. 2d 835 (7th Cir. 1961). Thus, we conclude that it is incumbent upon the proponent of a meeting competition defense to identify with particularity both his goods and the competing goods whose price was met so that the fact finder may determine whether the asserted good faith in fact exists.

In the instant case, respondent offered no evidence whatsoever concerning the prices of its carpets to dealers as compared with those of its competitors. Respondent did not submit a list of prices of its various types and grades of carpet, nor did it offer evidence on the prices of its competitors' carpets. Further, respondent did not establish whether its particular carpets at the various price levels were of the same or similar quality as that of its competitors at the same levels. Evidence of this nature is of particular importance in light of the testimony of respondent's vice-president concerning the variants which determine the grade and price of carpets. He stated that there are four factors which must be considered in comparing carpets — the type and quantity of fiber used in the face yarn, the number of stitches per inch, the quality of the material used to bind the tufts in place, and the type of double backing, if any. When any of these factors vary between carpets, according to this witness, the carpets are not of similar quality. Carpets which appear to be identical may vary in price to the retailer as much as \$2.35 a yard because of differences in the above factors. In the light of this testimony, it is obvious

that mere comparison of the rebates offered is inconclusive in determining the net prices of respondent's carpets to retailers or in comparing these net prices to those of competitors. There is some indication that respondent's carpets at the various price levels were of slightly superior quality to those of competitors at the same pricing points.⁴ If such was the case, respondent, by subsequently granting the rebate, may have been dropping the price of a superior product to the level or below that of products of lesser quality, even though the amount of the discount was less than that granted by competitors. In such circumstances, the meeting competition defense would not have been available. Thus, since respondent offered no definitive evidence from which we might conclude that it was in fact meeting the net price of its competitors through its practice of granting rebates, acceptance of its good faith meeting competition hypothesis would be pure supposition.

Moreover, for the reasons indicated in our decision in *Callaway Mills, supra*, we do not feel that respondent has sufficiently demonstrated that it was responding to an individual competitive situation, as is required by the Section 2(b) defense. *Federal Trade Commission v. A. E. Staley Mfg. Co.*, 324 U. S. 746 (1945); *Federal Trade Commission v. Cement Institute, et al.*, 333 U.S. 683 (1948); *Federal Trade Commission v. National Lead Company, et al.*, 352 U.S. 419 (1957); *E. Edelmann & Company v. Federal Trade Commission*, 239 F. 2d 152 (7th Cir. 1956), *cert. denied*, 355 U.S. 941 (1958).

We conclude, therefore, that respondent has violated Section 2(a) of the amended Clayton Act, and that an order against continued violation should issue. We do not adopt the hearing examiner's decision that respondent's acts may be excused pursuant to the meeting competition defense of Section 2(b) of that Act. Since the stipulation entered by counsel concerning the competitive injury effected by the price discriminations was limited to competition among and between respondent's customers, the complaint allegation that competition may be affected in the line of commerce in which respondent is engaged must be dismissed. Accordingly, an order vacating the initial decision and effecting the above results will issue. Rules of Practice, § 3.24(b), 28 Fed. Reg. 7080, 7091 (July 11, 1963).

Commissioner Anderson concurred in the result. Commissioner Elman's views on the disposition of the case are stated in a separate opinion. Commissioner Reilly did not participate for the reason he did not hear oral argument.

⁴ At one time in 1954, the chairman of respondent's board of directors is reputed to have said that the company could not afford to grant a rebate. As phrased by respondent's vice president in charge of sales: "He felt the value of the products we were making, we just couldn't afford to give volume rebates in addition to the quality we were giving."

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SEPARATE OPINION

FEBRUARY 10, 1964

By ELMAN, *Commissioner*:

The Commission rejects respondent's Section 2(b) (meeting competition in good faith) defense on the basis of the same analysis employed in the companion case of *Callaway Mills, Inc.*, Docket 7634 [p. 732 herein]—an analysis which I cannot accept, for the reasons stated in my dissenting opinion in *Callaway*. As in *Callaway*, respondent is subjected to an impossible burden of proof ("held to a strict accounting") under 2(b), a result which the Commission again attempts to justify by suggesting that the 2(b) defense is inconsistent with the basic objectives of the price-discrimination law, since the defense "permits systematic price discrimination injurious to small retailers when successfully interposed".¹ Again, respondent is deemed obliged to prove that his goods are of like grade, price and quality to his competitors' in order to negative remote and entirely conjectural inferences of bad faith. Finally—and in the face of its finding that respondent's "salesmen informed only those customers who inquired whether rebates were granted" as to the existence of respondent's rebate schedule—the Commission holds that respondent was not sufficiently responding to individual competitive situations.

In basing its rejection of respondent's 2(b) defense on the foregoing grounds, the Commission expressly passes over a far more convincing basis for rejection. Respondent presented its 2(b) defense through a single witness, its vice president in charge of sales. There was no testimony from any of respondent's sales representatives in the field or customers. Hence, we have only a vague idea of how respondent's rebate schedule actually operated, and with what effects. Moreover, the testimony of respondent's one witness, the sales vice president, lacks concreteness and is frequently rather ambiguous.

In suggesting that respondent's 2(b) defense could be rejected on the ground of want of substantial, reliable and probative evidence, I expressly reject complaint counsel's contention that the defense must be rejected because based on hearsay testimony, or testimony elicited by means of leading questions. The common-law exclusionary rules do not govern administrative adjudication. Still, a defense, to prevail, must of course be credibly supported by the record; and

¹ The suggestion that the Section 2(b) defense embraces "systematic" price discrimination appears to contradict the Commission's position, expressed both in *Callaway* and in the present decision, that meeting competition by a "system" is never permissible under 2(b).

it is arguable that the testimony adduced on the 2(b) issue failed to establish that respondent's price discriminations were made, in good faith, to meet competition.

I grant that it would be a curious result to accept Callaway Mills' 2(b) defense, while rejecting Cabin Crafts' for failure of proof. It seems clear that the latter adopted its rebate schedule only after, and because, Callaway had adopted such a schedule, and that Cabin Crafts' is the less discriminatory. But such paradoxes are inherent in the use of the case-by-case method of law enforcement in situations of industry-wide unlawful practices. The method, with its emphasis on individual findings of violation, its discrete records, and its narrowly adversary focus, is bound to result in inequities among competitors. The proper way to avoid such inequities is not to penalize Callaway Mills for Cabin Crafts' failure of proof, but to abandon routine reliance on the case-by-case method in situations for which it is not suited.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the hearing examiner's initial decision dismissing the complaint and upon briefs and oral argument in support of and in opposition to said appeal; and

The Commission, having determined that the appeal should be granted, and that the initial decision should be vacated and set aside, now makes the following findings relative to the facts, conclusions, and order, which are to be in lieu of said initial decision:

FINDINGS AS TO THE FACTS

1. Respondent, Cabin Crafts, Incorporated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office located in the city of Dalton, State of Georgia.
2. Respondent is engaged in the manufacture, sale, and distribution of rugs and carpets, with manufacturing plants located in Dalton, Georgia.
3. Respondent ships or causes its rugs and carpets to be shipped from their place of manufacture in the State of Georgia to purchasers located in various other States of the United States and is actively and continuously engaged in the solicitation of customers and in the sale of said products to customers located in various States other than the State in which respondent is located.
4. In the course of its activities as aforesaid, the respondent has sold and is selling carpets and rugs of like grade and quality to competing

retailers purchasing the same for resale subject to the following retro-active, cumulative, annual, quantity discounts:

<i>Aggregate annual purchases</i>	<i>Discount (percent)</i>
Up to \$9,999-----	0
\$10,000 to \$19,999-----	1
\$20,000 to \$34,999-----	1½
\$35,000 to \$49,999-----	2
\$50,000 or more-----	2½

5. By pricing its rugs and carpets pursuant to the above schedule, respondent has discriminated in price between retailers who compete with each other in the resale of respondent's rugs and carpets to consumers. Customers receiving discounts at each of the various levels of the discount schedule have been favored over all other customers who receive a lower discount or no discount at all.

6. In trading areas in which respondent sells the aforesaid products, there are competitive customers purchasing from respondent as aforesaid, and the effect of the purchase price differences caused by the annual, cumulative, quantity discount schedule set forth in the preceding paragraph may be substantially to lessen competition or to injure, destroy or prevent competition among and between respondent's customers so purchasing said carpets and rugs at the resulting higher and lower net prices, within the meaning of Section 2(a) of the amended Clayton Act.

7. The record fails to reveal that respondent's lower discriminatory prices have been set to meet the equally low prices charged by respondent's competitors for goods similar in quality to respondent's goods.

8. Respondent's prices are determined by a formula with broad application to all of respondent's customers and, hence, have not been responsive to individual competitive situations. Instead, they have resulted in a sales system productive of continued discriminations between competing customers, without regard to whether the customers have been offered lower prices by competitors.

CONCLUSIONS

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

2. The facts in this record as described above and in the accompanying opinion of the Commission conclusively establish that respondent has discriminated in price in the sale of rugs and carpets in commerce in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act.

3. The public interest requires the issuance of an order directing respondent to cease and desist from the violations found.

ORDER

It is ordered, That respondent, Cabin Crafts, Incorporated, 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 the allowance of cumulative volume discounts or otherwise, in the price of rugs and carpets of like grade and quality, by selling to any purchaser at a net price 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 that respondent's discriminations in price may be 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, and it hereby is, dismissed.

It is further ordered, That respondent 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 set forth herein.

Commissioner Anderson concurred in the result. Commissioner Elman's views on the disposition of the case are stated in a separate opinion. Commissioner Reilly did not participate for the reason he did not hear oral argument.

IN THE MATTER OF

CLIN-TEX PRODUCTS CORP. ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS LABELING ACTS

Docket C-709. Complaint, Feb. 13, 1964—Decision, Feb. 13, 1964

Consent order requiring Hoboken, N. J., manufacturers of wool products to cease violating the Wool Products Labeling Act by such practices as labeling quilting materials as containing tan wool when they contained substantially different amounts of other woolen fibers, and failing to disclose on labels the percentage of the total fiber weight of wool and other fibers; and to cease violating the Federal Trade Commission Act by representing the fiber content of said quilting materials falsely on invoices as "Tan Wool".

Complaint

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Clin-Tex Products Corp., a corporation, and Jerome Shapiro, and Sol Stafford, individually and as managers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Clin-Tex Products Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey.

Individual respondents Jerome Shapiro and Sol Stafford are the principal stockholders of said corporation and, as managers, cooperate in formulating, directing and controlling the acts, policies and practices of corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at 1000 Clinton Street, Hoboken, New Jersey.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment and offered for sale in commerce as "commerce" is defined in said Act, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were quilting materials stamped, tagged or labeled as containing tan wool, whereas, in truth and in fact, said quilting materials contained substantially different amounts of other woollen fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled or otherwise identified as required under the provisions of Section

4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were certain quilting materials with labels on or affixed thereto which failed to disclose the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) reused wool; (2) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; (3) the aggregate of all other fibers.

PAR. 5. The acts and practices of the respondent as set forth above were, and are in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

PAR. 6. Respondents in the course and conduct of their business, as aforesaid, have made statements on invoices and shipping memoranda to their customers misrepresenting the fiber content of certain of their said products.

Among such misrepresentations, but not limited thereto, were statements representing the fiber content thereof as "Tan Wool" which represents that the product was 100% wool, whereas in truth and in fact the product contained substantially different fibers than represented.

PAR. 7. In the course and conduct of their business, respondents now cause and for some time last past, have caused their said products, when sold, to be shipped from their place of business in the State of New Jersey to purchasers 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 Federal Trade Commission Act.

PAR. 8. The acts and practices set out in Paragraphs 6 and 7 have had and now have the tendency and capacity to mislead and deceive the purchasers of said products as to the true content thereof and cause them to misbrand products sold by them in which said materials were used.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

64 F.T.C.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Clin-Tex Products Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its offices and principal place of business located at 1000 Clinton Street, Hoboken, New Jersey.

Respondents Jerome Shapiro and Sol Stafford are managers and the principal stockholders of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Clin-Tex Products Corp., a corporation, and its officers, and Jerome Shapiro, and Sol Stafford, individually and as managers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, distribution or delivery for shipment in commerce, of wool interlining material or other wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from:

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Clin-Tex Products Corp., a corporation, and its officers, and Jerome Shapiro, and Sol Stafford, individually and as managers of said corporation, and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of interlining material or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in quilting material or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

TRANEX SCIENTIFIC, INC., ET AL. DOING BUSINESS AS TRAN-
EX SCIENTIFIC OF ILLINOIS

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

Docket C-710. Complaint, Feb. 13, 1964—Decision, Feb. 13, 1964

Consent order requiring concerns in Hinsdale, Ill. engaged in leasing a device designated as "Tranex" for use in cases of enuresis, or bed-wetting, to cease representing falsely in advertisements in newspapers, magazines and other media that use of the device would stop bed-wetting and correct the bed-wetting habit in all cases, and had been utilized successfully in the treatment of over 275,000 cases of bed-wetting.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Clin-Tex Products Corp., a corporation, and its officers, and Jerome Shapiro, and Sol Stafford, individually and as managers of said corporation, and respondents' representatives, agents and employees directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of interlining material or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in quilting material or any other textile products on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

TRANEX SCIENTIFIC, INC., ET AL. DOING BUSINESS AS TRAN-
EX SCIENTIFIC OF ILLINOIS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that Tranex Scientific, Inc., a corporation, Morton N. Rosenberg, individually and as an officer of said corporation, Robert T. Marquardt and Dorothy Jean Marquardt, copartners doing business under the name of Tranex Scientific of Illinois, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Tranex Scientific, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its main office and principal place of business at 7410 North Talman Avenue, Chicago, Illinois. Morton N. Rosenberg is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as the corporate respondent's.

Robert T. Marquardt and Dorothy Jean Marquardt are individuals doing business as copartners under the name of Tranex Scientific of Illinois at 629 Hillside Avenue, Hinsdale, Illinois.

PAR. 2. Respondents are now, and have been for some time last past, engaged in the leasing of a device designated as Tranex, for use in cases of enuresis, commonly referred to as "bed-wetting". Tranex is a device within the meaning of that term as set forth in the Federal Trade Commission Act.

PAR. 3. Respondents cause said device when leased to be transported from their places of business in the State of Illinois to lessees thereof located in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained a substantial course of trade and business in the leasing of said devices in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said businesses respondents have disseminated, and caused the dissemination of, certain advertisements concerning the Tranex device through the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, advertisements inserted in newspapers, magazines and other advertising media, for the purpose of inducing and which were likely to induce directly or indirectly the leasing of said device in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Among and typical of the statements and representations contained in said advertisements are the following:

Stops Bed Wetting Problems.

The Tranex method to solve bed-wetting problems has proven successful in over 275,000 cases.

Dry Bed Training solves this problem.

PAR. 6. Through the use of said advertisements and others similar thereto, but not specifically set out herein, respondents have represented, and are now representing, directly and by implication, that the use of said Tranex device will stop enuresis or bed-wetting and correct enuresis or the bed-wetting habit in all cases, and that respondents' device has been utilized successfully in the treatment of over 275,000 cases of bed-wetting.

PAR. 7. In truth and in fact:

1. The use of said device will not be effective in helping an individual to control enuresis, or to correct bed-wetting, if an organic defect or disease is involved.

2. The respondents' Tranex device has not been used successfully in the treatment of over 275,000 cases of enuresis or bed-wetting.

Therefore, the advertisements referred to in Paragraph Five were and are misleading in material respects and constituted, and now constitute, "false advertisements" as that term is defined in the Federal Trade Commission Act.

PAR. 8. The dissemination by the respondents of the false advertisements as aforesaid constituted and now constitutes, unfair and deceptive acts and practices in commerce in violation of Sections 5 and 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Tranex Scientific, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7410 North Talman Avenue, Chicago, Illinois. Respondent Morton N. Rosenberg is an officer of said corporation and his address is the same as that of said corporation.

Respondents Robert T. Marquardt and Dorothy Jean Marquardt are copartners doing business as Tranex Scientific of Illinois. Their principal place of business is located at 629 Hillside Avenue, Hinsdale, Illinois, and their address is the same as that of said partnership.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Tranex Scientific, Inc., a corporation, and its officers, Morton N. Rosenberg, individually and as an officer of said corporation, and Robert T. Marquardt and Dorothy Jean Marquardt, copartners doing business under the name of Tranex Scientific of Illinois, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing or distribution of a device known as "Tranex" or any other device which functions in substantially the same manner, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing the dissemination by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents directly or by implication:

(a) That the use of the Tranex device is of value in stopping bed-wetting or correcting enuresis; unless such advertisement is expressly limited in a clear and conspicuous manner to cases of enuresis or bed-wetting not caused by organic defects or diseases.

(b) That respondents' device has been successful in the treatment of over 275,000 cases of enuresis or bed-wetting or of any other specified number of cases not established by evidence in the possession of respondents.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase or lease of respondents' device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the