

mulgated thereunder in substituting labels as permitted by Section 3(e) of the said Act.

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

SPERRY RAND CORPORATION

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

Docket 7559. Complaint, Aug. 5, 1959—Decision, Feb. 17, 1964

Order dismissing—for the reason that the basis of the complaint was an isolated, non-recurring transaction which occurred as the result of abnormal conditions in the industry and in respondent's business and not likely to be repeated, and the effects on competition of this single incident appear too insubstantial to require formal action—complaint charging a manufacturer with discriminating in price by selling portable typewriters to Sears, Roebuck at lower prices than it sold them to other customers competing with Sears, notably, Gimbel's and Strawbridge & Clothier's of Philadelphia.

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 Section 2(a) of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Sperry Rand Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 30 Rockefeller Plaza, New York, New York.

PAR. 2. Respondent Sperry Rand Corporation is the successor, by consolidation on June 30, 1955, of Remington Rand, Inc., and The Sperry Corporation.

The principal activities of the respondent are conducted through many divisions including the Remington Rand Division which maintains headquarters at 315 4th Avenue, New York, New York, and manufacturing plants located in approximately 22 cities in various states of the United States.

Prior to June 30, 1955, Remington Rand, Inc., was engaged in the manufacture, sale and distribution of various products including typewriters, business machines, systems and equipment. Since the aforesaid consolidation, respondent Sperry Rand Corporation, through its Remington Rand Division, has, and is now, engaged in the manufacture, sale and distribution of the same products.

PAR. 3. In the course and conduct of its business respondent engages in commerce, as "commerce" is defined in the Clayton Act, in that it causes said products, when sold, to be transported from their places of manufacture to purchasers thereof located in the same and various other states of the United States. Said products are sold and distributed for use and consumption in the various states of the United States.

PAR. 4. The respondent, in the course and conduct of its business, has been, and is, in competition with other corporations, individuals, partnerships, and firms engaged in manufacturing, selling and distributing said products in commerce between and among the various states of the United States and the District of Columbia.

Respondent's purchasers of said products are competitively engaged in the resale of said products at retail in the various territories and places where said purchasers respectively carry on their business. Included among such purchasers are mail order houses, department stores, specialty shops, and other retailers.

PAR. 5. In the course and conduct of its business, as above described, respondent has sold its products to some of said purchasers at higher prices than it has sold such products of like grade and quality to other of said purchasers. Respondent's favored purchasers are now, and have been, competing with its non-favored purchasers in the resale of said products.

PAR. 6. Illustrative of the pricing practices alleged in Paragraph Five is the following:

During an approximate six month period commencing June 1, 1958, respondent offered to sell and sold typewriters to a favored customer having branches located in various cities including New York, New York; Philadelphia, Allentown, Pittsburgh, Pennsylvania; and Atlanta, Georgia, at prices, including Federal excise tax, of \$59.40 and \$64.19.

During the same period of time respondent sold typewriters of like grade and quality to other customers located in the same cities at prices, including Federal excise tax, ranging from approximately \$74.84 to \$79.56.

Many of the aforesaid purchasers paying the higher prices for respondent's products were, and are, competitively engaged in the resale of said products with purchasers paying the lower prices.

PAR. 7. The effect of such discriminations in price made by respondent as set forth in Paragraph Six hereof injured, destroyed or prevented competition with respondent's purchasers who received the benefit of such discriminations, and, if permitted to be resumed, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its purchasers are respectively engaged; or to injure, destroy or prevent competition with respondent or its purchasers who receive the benefit of such discriminations.

PAR. 8. The foregoing acts and practices of the respondent, as above alleged, violate Section 2(a) of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13).

OPINION OF THE COMMISSION

FEBRUARY 17, 1964

By the Commission:

The complaint in this matter charges violation of Section 2(a) of the Clayton Act, as amended, by respondent in connection with the sale of some 45,000 "Quiet-Riter" portable typewriters, manufactured by respondent's Remington Rand Division, to Sears Roebuck and Company during a three-month period in 1958. The hearing examiner rendered an initial decision in which he (a) found that this sale to Sears Roebuck had inflicted injury on Sears' competitors, who were forced to pay respondent higher prices for the same machines, (b) rejected respondent's defenses of cost-justification, changing-conditions, and good-faith meeting of competition, and (c) entered an order to cease and desist. Respondent has appealed.

We find it unnecessary to reach, and we intimate no view upon, the merits of any of respondent's contentions on this appeal. The purpose of Commission cease and desist orders is not to punish law violators, but to prevent the recurrence of unlawful conduct. If the probability of such recurrence is remote and insubstantial, the Commission may conclude that the public interest does not require entry of a formal order.

In the unique circumstances of this case, we believe that termination of this proceeding without entry of a cease and desist order is the appropriate disposition. It appears that the special sale to Sears Roebuck which is the basis of the complaint was an isolated, non-recurring transaction, which occurred as the result of abnormal conditions in the industry and in respondent's business that are very unlikely to be repeated. The effects on competition of this single incident appear too insubstantial to require formal action.

Accordingly, and without adjudicating the merits of the case, the initial decision will be vacated and the complaint dismissed.

Commissioner Reilly did not participate for the reason that he did not hear oral argument.

Commissioner MacIntyre did not concur for the reason that he cannot locate in the record of this proceeding the evidence apparently relied upon by the Majority for its action. For example, the action of the Majority appears to be based upon an assurance that the discriminatory conduct herein charged will not be repeated. According to the Majority, that assurance stems from the "unique circumstances of this case." He cannot find in the "unique circumstances of this case" evidence of the assurance so readily apparent to the Majority.

FINAL ORDER

Upon consideration of respondent's appeal from the initial decision of the hearing examiner, and for the reasons stated in the accompanying opinion,

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint be, and it hereby is, dismissed.

Commissioner MacIntyre not concurring for the reason that he cannot locate in the record of this proceeding the evidence apparently relied upon by the Majority for its action. For example, the action of the Majority appears to be based upon an assurance that the discriminatory conduct herein charged will not be repeated. According to the Majority, that assurance stems from the "unique circumstances of this case." He cannot find in the "unique circumstances of this case" evidence of the assurance so readily apparent to the Majority.

Commissioner Reilly did not participate for the reason that he did not hear oral argument.
