

Complaint

65 F.T.C.

IN THE MATTER OF

CANNON MILLS COMPANY

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

Docket 7494. Complaint, May 15, 1959—Decision, Apr. 24, 1964

Order dismissing, for failure to prove a prima facie violation, complaint charging a North Carolina manufacturer of finished textile products, such as sheets and towels, with discriminating in price in violation of Sec. 2(a) of the Clayton Act by selling finger-tip towels to some customers in the Portland, Oreg., and Washington, D.C., areas at lower prices than it charged their competitors.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating, Section 2(a) of the amended Clayton Act (15 U.S.C., Sec. 13), hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located at Kannapolis, North Carolina.

Respondent directs and controls the sales and distribution policies of its wholly owned sales subsidiary, Cannon Mills, Inc., of 70 Worth Street, New York City.

PAR. 2. Respondent is engaged in the business of manufacturing, distributing, and selling finished textile products, such as sheets and towels. Respondent's gross sales for the year ending December 31, 1957, were in excess of \$175,000,000.

PAR. 3. These products are sold by respondent through its wholly owned subsidiary, Cannon Mills, Inc., 70 Worth Street, New York, New York, for use, consumption, or resale within the United States, and respondent ships or causes them to be shipped and transported from the state of location of its principal place of business to purchasers located in States other than the State in which the shipment or transportation originated.

PAR. 4. Respondent maintains a course of trade in commerce, as "commerce" is defined in the amended Clayton Act, in such products among and between the States of the United States.

Respondent maintains and operates a manufacturing plant at Kannapolis, North Carolina. From this plant it ships and sells, or causes to be shipped and sold, throughout the United States, to vari-

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ous purchasers located in the several States of the United States, including Oregon.

PAR. 5. In the course and conduct of its business in commerce, respondent is competitively engaged with other corporations, individuals, partnerships, and firms in the manufacture, distribution, and sale of the products stated above.

PAR. 6. In the course and conduct of its business in commerce, respondent is discriminating in price between different purchasers of its products of like grade and quality by selling to some purchasers at higher and less favorable prices than it sells to other purchasers competitively engaged in the resale of its products with the non-favored purchasers.

For example, respondent has participated in the periodic advertising and promotional plans of Fred Meyer, Inc., of Portland, Oregon, occurring annually for many years. During September and October of 1956, respondent participated in the annual coupon book program, for the participation in which respondent sold finger-tip towels, style No. 7205, to Fred Meyer, Inc., at \$1.55 per dozen. The normal price for the same goods of like grade and quality to competing customers at the same time was \$1.65 per dozen on quantities of 500 dozen or more and \$1.75 per dozen for quantities of less than 500 dozen.

PAR. 7. The effect of respondent's discriminations in price, as alleged, may be substantially to lessen, destroy, or prevent competition or tend to create a monopoly in the line of commerce in which respondent and its purchasers are engaged.

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

ORDER VACATING INITIAL DECISION AND DISMISSING COMPLAINT

This case is before the Commission on the appeal of complaint counsel from the initial decision of the hearing examiner, filed December 3, 1963. While finding a *prima facie* violation by respondent of Section 2(a) of the Clayton Act, as amended, the examiner dismissed the complaint on the ground that respondent had succeeded in its cost-justification defense. Upon examination of the record, the Commission has concluded that the evidence of record is insufficient to prove the requisite adverse effects on competition. Since a *prima facie* violation was not proved, it is unnecessary to reach the merits of respondent's cost-justification defense. Accordingly,

It is ordered, That the initial decision of the examiner be, and it hereby is, vacated.

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FEDERAL TRADE COMMISSION DECISIONS

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