

report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF
CLAIROL INCORPORATED

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

Docket C-832. Complaint, Sept. 15, 1964—Decision, Sept. 15, 1964

Consent order requiring a major manufacturer of hair coloring and other beauty aids to cease discriminating in price between its customers competing in the same market area, and preticketing its products with deceptive prices.

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, as amended (U.S.C., Title 15, Section 13), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), 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 with respect thereto as follows:

PARAGRAPH 1. Respondent Clairol Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1290 Avenue of the Americas, New York, New York. Respondent Clairol Incorporated is a wholly owned subsidiary corpora-

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tion of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale and distribution of beauty preparations, principally hair coloring products, hereinafter collectively referred to as beauty products. Respondent is now and has been, at all times referred to herein, one of the largest concerns in the United States in volume of sales of hair coloring products. Respondent sells its beauty products throughout the United States to a large number of customers purchasing such products for use, consumption, or resale. Respondent's customers include beauty salons, beauty supply dealers, beauty schools, department stores, drug wholesalers, and drug retailers.

COUNT I

Alleging violation of subsection (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13):

PAR. 3. Respondent sells and distributes its beauty products in commerce by causing said products to be shipped from its manufacturing plant located at Stamford, Connecticut, and to and from a warehouse located at Los Angeles, California, to purchasers thereof located in the several States of the United States and the District of Columbia. There is now and has been, at all times mentioned herein, a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent is now, and has been, in substantial competition with other corporations, individuals, partnerships and firms, engaged in the manufacture, sale and distribution of beauty products, many of which are also engaged in commerce between and among the various States of the United States and the District of Columbia.

Many of the purchasers of respondent's products and customers of some of said purchasers are in substantial competition with each other in the use, consumption, distribution, or resale of said products within the trading areas where such purchase or customers of purchasers are located.

PAR. 5. During the period from April 1959, to the present, respondent, in the course and conduct of its business in commerce, has discriminated in price between different purchasers of its beauty products of like grade and quality by selling to some of its purchasers at prices substantially higher and less favorable than the prices charged to other

of its purchasers, some of whom are in competition with the favored purchasers in the use, consumption, distribution or resale of said products.

For example, respondent has classified certain of the purchasers of its products as beauty salons "chain," beauty jobbers, and beauty salons "non-chain." In making sales to the aforesaid beauty trade, respondent has designated a basic price known as "List Price" or "Regular Price" from which all trade discounts are calculated. On certain of respondent's largest volume products, beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons classified by respondent as "non-chain" pay "List Price" or "Regular Price" less a discount of only forty (40) per cent. On other of respondent's products the beauty salons classified as "chain" pay "List Price" or "Regular Price" less a discount of thirty-three and one-third ($33\frac{1}{3}$) per cent and fifteen (15) per cent; whereas, beauty jobbers and beauty salons "non-chain" pay "List Price" or "Regular Price" less a discount of forty (40) per cent.

PAR. 6. The effect of the discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the respondent is engaged, and in which said favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, or its purchasers who receive the benefits of such discriminations.

PAR. 7. The foregoing alleged discriminations in price made by respondent Clairol Incorporated in the sale of its products are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act:

PAR. 8. Paragraphs Three and Four of Count I are incorporated herein by reference and made a part of this Count as fully and with the same effect as if set forth herein verbatim, except that the reference to the Clayton Act, as amended, is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 9. In the course and conduct of its business as aforesaid, and for the purpose of inducing the purchase of its beauty products, respondent has made numerous statements in brochures and in sales material with respect to the prices of its said products and the savings resulting to purchasers of such products.

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Typical and illustrative of the aforesaid statements are the following:

Offer For Limited Time Only
Miss Clairol Creme Formula
Reg. \$9.00 doz.
Deal Price \$7.20 doz.

Brochures and sales material containing the aforesaid statements have been distributed by respondent to beauty jobbers engaged in the resale and distribution of respondent's beauty products.

PAR. 10. By and through use of the above-quoted statements, and others of similar import not specifically set out herein, respondent represented that the higher stated price set out in said advertisements in connection with the term "Reg." was the actual, bona fide price at which the advertised product was offered for sale to beauty salons by respondent and its beauty supply dealers on a regular basis for a reasonably substantial period of time in the recent, regular course of business in the trade areas where the representations were made, that the "Deal Price" was a special price available for a limited time only, and that the difference between the higher price and the lower price represented savings to purchasers of the advertised product.

PAR. 11. In truth and in fact, the higher price set out in said brochures and sales material in connection with the term "Reg." was in excess of the price at which the advertised product had been sold or offered for sale by respondent and its beauty supply dealers on a regular basis for a reasonably substantial period of time in the recent course of business, and the difference between the higher and lower price did not represent savings to purchasers of said product. Additionally, said lower price was not a "Deal Price" available for a limited time only.

PAR. 12. The statements and representations as set forth in Paragraphs Ten and Eleven hereof were and are false, misleading and deceptive. By distributing brochures and sales material containing the aforesaid representations to its beauty supply dealers for use in making sales to beauty salons and others, respondent has placed in the hands of said dealers means and instrumentalities by and through which said dealers could, and did, mislead beauty salons as to the actual, bona fide price of respondent's beauty products and the savings to be realized by the purchase of said products.

PAR. 13. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive

acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violations of subsection (a) of Section (2) of the Clayton Act, as amended, and of Section 5 of the Federal Trade Commission Act, and the respondent 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 respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 Clairol Incorporated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1290 Avenue of the Americas, in the city of New York, State of New York. Respondent Clairol Incorporated is a wholly owned subsidiary corporation of Bristol-Myers Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 630 Fifth Avenue, in the city of New York, State of New York.

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

ORDER

It is ordered. That respondent Clairol Incorporated, a corporation, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in or in connection with the sale of beauty products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such prod-

ucts of like grade and quality by selling to any beauty salon or to any distributor for supply to any beauty salon at net prices higher than the net prices charged any other purchaser who, in fact, competes in the use, consumption or resale of said products with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

It is further ordered, That respondent Clairol Incorporated, a corporation, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale, or distribution of beauty products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the words "Regular Price," "Reg.," or words of similar import, to refer to a former price, the amount of which is in excess of the actual, bona fide price at which such merchandise has been offered for sale on a regular basis for a reasonably substantial period of time in the recent, regular course of business in the trade area or areas where the representations are made; or misrepresenting in any manner the actual, bona fide price of such merchandise;

(2) Representing, with regard to prices other than introductory prices, that savings are afforded to purchasers unless the price at which such merchandise is offered constitutes a substantial reduction, and a reduction equal to any amount stated or otherwise directly or by implication represented, from the actual, bona fide price at which such merchandise was offered to purchasers on a regular basis for a reasonably substantial period of time in the recent regular course of business in the trade area where the representation is made;

(3) Representing, directly or by implication, that savings are afforded to purchasers by a special deal or introductory price unless respondent establishes that such is the fact;

(4) Representing directly or by implication that the selling price, special deal or any offer being advertised is limited in point of time or in any other manner unless such restriction or limitation is actually imposed, and adhered to, by respondent;

(5) Placing in the hands of beauty jobbers means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any such merchandise in the respects set out above.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission

