
IN THE MATTER OF
BOEPPLE SPORTSWEAR MILLS, INC.

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

*Docket 8633. Complaint, June 30, 1964—Decision, Nov. 10, 1964**

Consent order requiring a New York City seller of wearing apparel, to cease violating Sec. 2(d) of the Clayton Act by such practices as granting substantial promotional allowances, for the advertising of its products, to favored customers purchasing for resale, while not making proportionally equal payments available to all competitors of favored customers. The effective date of the order has been postponed until further order of the Commission.

COMPLAINT

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

*This order was made effective on Aug. 9, 1965, see *Abby Kent Co., Inc., et al.*, Docket No. C-328, et al., Aug. 9, 1965, 68 F.T.C. 393.

Complaint

66 F.T.C.

particularly described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended, (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Boepple Sportswear Mills, Inc., 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 1410 Broadway, New York 18, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, sale, and distribution of ladies' sweaters and knitted skirts to a large number of retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial, having exceeded \$1,600,000 for the calendar year ending 1960.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business located in the State of New York, to customers located in many States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. Included among the payments alleged in Paragraph Four were credits, or sums of money, sometimes hereinafter referred to as promotional allowances, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services, or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers.

For example, respondent made payments and allowances to various customers in various trading areas including Chicago, Illinois, and New York, New York, for advertising its products in newspapers and catalogs. During the year 1960, respondent paid The Fair and Wie-

1103

Initial Decision

boldt Stores, Inc., of Chicago, Illinois, promotional allowances in the amounts of \$165.06 and \$100, respectively. During the year 1962, respondent paid Carson, Pirie, Scott of Chicago an advertising allowance of \$200. In New York, during 1961, respondent paid promotional allowances to Oppenheim Collins and Best & Co., among others, in the amounts of \$150 and \$933, respectively. In 1962, respondent paid promotional allowances to Best & Co., Saks Fifth Avenue and Bloomingdale Bros., Division of Federated Department Stores, Inc., in the amounts of \$925, \$250 and \$540.72, respectively.

Respondent did not make, or offer to make, or otherwise make available such allowances on proportionally equal, or any, terms to all other customers in Chicago and New York competing with those who received such allowances.

PAR. 6. The acts and practices of respondent as alleged above are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Sec. 13).

Mr. Peter J. Dias, Mr. Myer S. Tulkoff and Mr. Gerald Levine, for the Commission.

No appearance filed for respondent.

INITIAL DECISION BY WILMER L. TINLEY, HEARING EXAMINER

OCTOBER 2, 1964

The Federal Trade Commission, on June 30, 1964, issued its complaint charging the respondent named in the caption hereof with discriminating in promotional payments or allowances among its competing customers in violation of subsection (d) of Section 2 of the Clayton Act, as amended. The complaint was duly served upon respondent by registered mail on July 15, 1964, and the answer thereto was due on August 14, 1964. No answer to the complaint has been filed.

On August 20, 1964, the hearing examiner cancelled the hearing scheduled in the complaint herein, subject to being rescheduled by further order, and scheduled a joint prehearing conference with counsel to be held on September 21, 1964, in New York, N.Y., in seven proceedings, including this one, in which complaints were simultaneously issued by the Commission, charging manufacturers of wearing apparel with similar violations of subsection (d) of Section 2 of the Clayton Act, as amended. Although the respondent herein was then in default under Section 3.5(c) of the Commission's Rules of Practice, the order scheduling the joint prehearing conference was

Initial Decision

66 F.T.C.

served upon said respondent, and provided that it may "be represented at said conference by counsel, or by an authorized official of the corporation." Said joint prehearing conference was duly held in New York, N.Y., on September 21, 1964. It was stenographically reported, and the transcript thereof constitutes a part of the record herein, but, pursuant to the request of some of the parties, it is not public (Section 3.8(b) of the Commission's Rules of Practice). The respondent herein was not represented at said prehearing conference.

No answer to the complaint having been filed, and no appearance having been made by the respondent herein at the joint prehearing conference hereinabove referred to, respondent is in default. Pursuant to the provisions of Section 3.5(c) of the Commission's Rules of Practice, the hearing examiner accordingly enters this initial decision, finding the facts to be as alleged in the complaint and containing appropriate conclusions and order.

FINDINGS OF FACT

1. Respondent, Boepple Sportswear Mills, Inc., 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 1410 Broadway, New York 18, New York.

2. Respondent is now and has been engaged in the manufacture, sale, and distribution of ladies' sweaters and knitted skirts to a large number of retail specialty and department stores located throughout the United States. Respondent's sales of its products are substantial, having exceeded \$1,600,000 for the calendar year ending 1960.

3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from the respondent's principal place of business located in the State of New York, to customers located in many States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on pro-

portionally equal terms to all other customers competing in the sale and distribution of respondent's products.

5. Included among the payments referred to in paragraph 4 hereof were credits, or sums of money, sometimes hereinafter referred to as promotional allowances, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services, or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers.

6. For example, respondent made payments and allowances to various customers in various trading areas including Chicago, Illinois, and New York, New York, for advertising its products in newspapers and catalogs. During the year 1960, respondent paid The Fair and Wieboldt Stores, Inc., of Chicago, Illinois, promotional allowances in the amounts of \$165.06 and \$100, respectively. During the year 1962, respondent paid Carson, Pirie, Scott of Chicago an advertising allowance of \$200. In New York, during 1961, respondent paid promotional allowances to Oppenheim Collins and Best & Co., among others, in the amounts of \$150 and \$933, respectively. In 1962, respondent paid promotional allowances to Best & Co., Saks Fifth Avenue and Bloomingdale Bros., Division of Federated Department Stores, Inc., in the amounts of \$925, \$250 and \$540.72, respectively.

7. Respondent did not make, or offer to make, or otherwise make available such allowances on proportionally equal, or any, terms to all other customers in Chicago and New York competing with those who received such allowances.

CONCLUSION

The acts and practices of respondent, as hereinabove found, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

ORDER

It is ordered, That respondent Boepple Sportswear Mills, Inc., a corporation, its officers, directors, agents, representatives and employees, directly or through any corporate or other device, in the course of its business in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of any customer of the respondent as compensation or in consideration for advertising or promotional

Complaint

66 F.T.C.

services, or any other service or facility, furnished by or through such customer in connection with the handling, sale or offering for sale of wearing apparel products manufactured, sold or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing with such favored customer in the distribution or resale of such products.

DECISION AND ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 10th day of November, 1964, become the decision of the Commission.

It is further ordered, That the effective date of the order to cease and desist be, and it hereby is, postponed until further order of the Commission.

IN THE MATTER OF

THE GREYSTONE CORPORATION