

ET AL.

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

Docket C-802. Complaint, Aug. 3, 1964—Decision, Jan. 14, 1965

Order modifying an earlier order dated Aug. 3, 1964, 66 F.T.C. 416, which prohibited a Tampa, Fla., cigar manufacturer from misrepresenting that

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its cigars were made in Cuba or from Cuban tobacco by striking those sections of the order which required respondent to disclose the countries of origin of non-Cuban tobacco used in its cigars.

ORDER MODIFYING DECISION AND ORDER

The Commission having issued its decision and order on August 3, 1964 [66 F.T.C. 416], in disposition of this proceeding and having on October 14, 1964, issued and caused to be served its order reopening the proceeding for the purpose of modifying the order contained in the Commission's aforesaid decision and order solely by striking prohibitions numbered 2, 3 and 4 thereof; and

Such order of reopening, having also duly granted the respondents thirty days after service thereof within which to file memorandum stating any objections they might have to such modification and no memorandum having been timely filed by the respondents objecting in that respect or otherwise showing cause why the order to cease and desist should not be so modified:

Wherefore, it is ordered, That the order contained in the decision and order issued by the Commission on August 3, 1964, be, and it hereby is, modified by striking prohibitions numbered 2, 3 and 4.

IN THE MATTERS OF

BRANFORD CO., INC. (Docket 8625)
BROWNIE KNITTING MILLS, INC. (Docket 8626)
BARCLAY KNITWEAR CO., INC. (Docket 8632)

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

Complaints, June 30, 1964¹—Decisions, Jan. 18, 1965²

Consent orders requiring three New York City manufacturers of wearing apparel to cease violating Sec. 2(d) of the Clayton Act by paying advertising or promotional allowances to favored retailers of their products, while not making such payments available on proportionally equal terms to all their customers competing with favored retailers, and postponing effective date of the orders until further order of the Commission.

COMPLAINTS

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

¹ Similar complaints are combined.

² These orders were 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.

particularly described, have violated and are 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 complaints, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Branford Co., 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.

Respondent, Brownie Knitting 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 120 East 23 Street, New York, New York.

Respondent, Barclay Knitwear Co., 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 1239 Broadway, New York, New York. Respondent maintains and operates a warehouse and manufacturing plant in Port Ewen and Kingston, New York, respectively.

PAR. 2. Respondent, Branford Co., Inc., Docket No. 8625, is now and has been engaged in the manufacture, sale, and distribution of women's knitted sweaters. Its sales, which are substantial, are made to a large number of customers, including retail specialty and department stores located throughout the United States.

Respondent, Brownie Knitting Mills, Inc., Docket No. 8626, is now and has been engaged in the manufacture, sale and distribution of ladies' sweaters, skirts, pants and coordinates, under the following trade names: Maid O'Fur; College Board; Kara-lon; Cara-mia; Crepe-lene, and Semester. Respondent sells its products 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 \$2,865,000 for the calendar year ending December 31, 1960.

Respondent, Barclay Knitwear Co., Inc., Docket No. 8632, and four operating, wholly owned subsidiaries are now and have been, engaged in the sale and distribution of men's and boys' knitted sweaters, shirts, outerwear and other items of wearing apparel which are manufactured by respondent and its wholly owned subsidiary, Barclay Sales Corporation. Respondent sells its products, under its own and customer labels, to a large number of independent and chain retailers and department stores located throughout the United States. Respondent's sales of its products are substantial, having exceeded \$8,320,000 for the fiscal year ending April 30, 1961.

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PAR. 3. In the course and conduct of their business, respondents have engaged and are now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondents sell and cause their products to be transported from their principal place of business located in the State of New York, to customers located in other 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 respondents and their customers.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their 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 respondents, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondents' products.

PAR. 5. Included among the payments alleged in Paragraph Four were credits or sums of money 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 respondents' products, including advertising in various forms, such as newspapers and catalogs, sometimes hereinafter referred to as promotional allowances.

For example, during the period 1961 through 1962, respondent, Branford Co., Inc., Docket No. 8625, made payments and allowances to various customers in various cities, including Philadelphia, Pennsylvania and Washington, D.C., for advertising its products in newspapers and catalogs. In Philadelphia, during the year 1961, respondent paid Lit Brothers and Strawbridge & Clothier promotional allowances in the amount of \$150 and \$275 respectively, and during the year 1962 paid Lit Brothers, Strawbridge & Clothier and John Wanamaker the sums of \$500, \$430 and \$400, respectively. In Washington, during the year 1961, respondent paid Woodward & Lothrop and The Hecht Co. promotional allowances of \$495 and \$250, respectively, and during the year 1962, paid Woodward & Lothrop and Lansburgh's the sums of \$400 and \$50, 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 Philadelphia and Washington, D.C., competing with those who received such allowances.

For example, during the period 1960 through 1961, respondent, Brownie Knitting Mills, Inc., Docket No. 8626, made payments and allowances to various customers in various cities including Dallas, Texas, and San Antonio, Texas, for advertising its products in newspapers. During the year 1961, respondent paid Sanger-Harris and E. M. Kahn & Co. of Dallas, Texas promotional allowances in the amounts of \$425 and \$110.88, respectively. In San Antonio, Texas, during the year 1960, respondent paid Frost Bros. and Siegel's promotional allowances in the amounts of \$435.75 and \$50, respectively, and during the year 1961 paid the same customers \$607.12 and \$104, 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 Dallas and San Antonio competing with those who received such allowances.

For example, during the period 1959 through 1961, respondent, Barclay Knitwear Co., Inc., Docket No. 8632, made payments and allowances to various customers in various cities, including Washington, D.C., Chicago, Illinois and Boston, Massachusetts for advertising its products in newspapers and catalogs. During the year 1959, respondent paid The Hecht Company of Washington, D.C. promotional allowances in the amount of \$345; and during the year 1960, paid the same customer \$400. During the year 1959, respondent paid Annes Department Store and Mages Sporting Goods Company, both of Chicago, Illinois, promotional allowances in the amount of \$40 and \$100 respectively, and during the year 1960, paid Meyers Department Store of Chicago the amount of \$60; and in 1961 respondent paid Annes Department Store of Chicago, the amount of \$38. In Boston, Massachusetts, for the years 1959 and 1960, respondent paid Jordan Marsh \$250 per year. In 1961 respondent paid Jordan Marsh \$175.

Respondent did not make, or offer to make, or otherwise make available such promotional allowances on proportionally equal, or any, terms to all other customers in Washington, D.C., Chicago, Illinois and Boston, Massachusetts, competing with those who received such allowances.

PAR. 6. The acts and practices of respondents, 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, Section 13).

DECISIONS AND ORDERS

The Commission having issued its complaints on June 30, 1964, charging respondents with violation of Section 2(d) of the Clayton

Act, as amended, and respondents having been served with a copy of complaint; and

The Commission having determined upon respondents' request, that the circumstances are such that the public interest would be served by waiver here of the provision of § 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The hearing examiner having certified to the Commission respondents' duly executed agreements containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint, 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 aforesaid agreements and having determined that they provide an adequate basis for appropriate disposition of these proceedings, the agreements are hereby accepted, the following jurisdictional findings are made, and the following orders are entered:

1. Respondent Branford Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1410 Broadway, New York, New York.

Respondent Brownie Knitting Mills, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 120 East 23rd Street, New York, New York.

Respondent Barclay Knitwear Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 1239 Broadway, New York, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of these proceedings and of respondents, and the proceedings are in the public interest.

ORDER

It is ordered, That each respondent named in the above-captioned proceedings, and 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 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.

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.