

IN THE MATTER OF
SYLVANIA ELECTRIC PRODUCTS, INC.

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

Docket 8501. Complaint, June 13, 1962—Decision, Feb. 24, 1965

Order vacating an earlier consent order dated February 28, 1964, 64 F.T.C. 1273, and dismissing the complaint which charged a Waltham, Mass., manufacturer of photographic lighting products with making discriminatory promotional allowances to certain favored customers, such dismissal being based on respondent's affidavit that the objectionable practices have been discontinued.

CONCURRING OPINION

BY MACINTYRE, *Commissioner*:

Commissioner MacIntyre concurs in the result. As the Commission's order notes, the consent agreement with respondent provided that the

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effective date of the order against Sylvania should be stayed until the Commission issued a final order in *General Electric Company*, Docket No. 8487. That case was dismissed on February 28, 1964 [64 F.T.C. 1238], "without adjudicating any issue of fact or law." I did not concur at the time in the failure to adjudicate the questions presented in Docket 8487. The issuance of a cease and desist order as such in the *General Electric* proceeding was not required by the terms of the consent agreement in this case as a prerequisite to the imposition of an order against Sylvania. Nevertheless, it is fair to say the agreement at least implicitly contemplated a disposition of *General Electric* on the merits, whether by way of a cease and desist order or dismissal. Since the Commission failed to perform its fact finding function in that instance, I agree that equity compels dismissal of the complaint and order in this proceeding. It is regrettable that the failure to perform its adjudicatory function in one proceeding has vitiated the Commission's efforts in another case.

ORDER VACATING FINAL ORDER AND DISMISSING COMPLAINT

This matter has come on to be heard by the Commission upon respondent's petition, filed December 1, 1964, requesting that the Commission's order to cease and desist, issued on February 28, 1964 [64 F.T.C. 1273], be vacated and set aside and the complaint dismissed.

The Commission's order in this matter is based upon an agreement containing a consent order. The agreement provided that it would be subject to the condition that the effective date of the Commission's order entered pursuant to the agreement would be stayed until the Commission issued a final order in the matter of *General Electric Company*, Docket No. 8487 [64 F.T.C. 1238]. By an order issued January 4, 1963, the Commission accepted the consent agreement subject to said condition. Thereafter, on February 28, 1964, the Commission issued its final order dismissing the complaint in the *General Electric* case. On the same date, the Commission issued its final order to cease and desist herein. Subsequently, on respondent's motion, enforcement of said order was stayed until further direction of the Commission.

Respondent bases its present request, in part, on the fact that the same promotional practices, *i.e.*, payments for advertising of photolamps in catalogs owned by wholesaler customers, which led to the consent agreement herein, were also the subject of one count in the *General Electric* complaint and that it did not contemplate at the time it executed the consent agreement that the *General Electric* complaint would be dismissed without adjudication of any issue of fact

or law. In addition, respondent bases its request on the fact that in seventeen related matters involving alleged discriminatory allowances by suppliers for advertising in the same wholesaler-owned catalogs named in the complaint herein, the Commission, in the exercise of its administrative discretion, determined that litigation should be terminated with acceptance of the assurances by the respondents therein that the practices which had been discontinued, would not be resumed. In its declaratory opinion in those matters, the Commission held that the practices were illegal. However, upon consideration of all the circumstances presented in those matters, the Commission concluded, in view of respondents' assurances, that the public interest did not require the entry of cease-and-desist orders.

In the petition now before us, respondent states that it is fully cognizant of the views of the Commission as to the law expressed in the aforesaid declaratory opinion. In an attached affidavit duly executed by a responsible official, respondent states that it has discontinued the practices and that it has no intention of resuming payments for photolamp advertising in customer-owned or customer-controlled publications in the absence of a plan proportionally available to all competing customers.

The Commission has duly considered respondent's petition and has concluded that in the circumstances the public interest will be fully served by acceptance of respondent's affidavit.

On the basis of the foregoing:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the Commission's decision and order to cease and desist, issued herein on February 28, 1964 [64 F.T.C. 1273], be, and it hereby is, vacated and set aside.

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

Commissioner MacIntyre concurring in the result for the reasons stated in his accompanying opinion.

IN THE MATTER OF
GARRETT-HOLMES & CO., INC.

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

Docket 8564. Complaint, Mar. 26, 1963—Decision, Feb. 26, 1965

Order requiring a Kansas City, Kans., wholesale purchaser and distributor of