

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

Docket 7969. Complaint, June 23, 1960—Decision, June 2, 1965

Order vacating a consent agreement which suspended a cease and desist order against a Newark, N.J., wholesaler of Emerson brand electrical appliances and dismissing the complaint which charged the firm with discriminating between its customers in granting promotional allowances in violation of Sec. 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the named respondents have violated and are now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues this complaint stating its charges with respect thereto as follows:

PAR. 1. Respondent Emerson Radio Associates, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 985 Broad Street, Newark, New Jersey. Individual respondents Michael Kory and Murray Golden are now, and were during all times hereinafter stated, officers and directors of said corporate respondent, and are said corporation's principal stockholders. These individual respondents are and have been controlling and directing the operations of corporate respondent during the period from 1956 to the present. They have the same address as does corporate respondent.

PAR. 2. Respondent Emerson Radio Associates, Inc., is now, and has been, engaged in the business of selling and distributing to retail outlets for resale to the consuming public "Emerson" brand appliance products such as television and radio receiving sets, high fidelity phonographs and air conditioning units. Respondent corporation sells and distributes these appliance products to retail outlets pursuant to a "Distributor Franchise Agreement" entered into by it with Emerson Radio & Phonograph Corporation, the manufacturer of "Emerson" appliance products.

Respondent corporation's sales of appliance products exceeded \$10,000,000 in 1959.

PAR. 3. In the course and conduct of its business, respondent corporation has been engaged and is presently engaged in commerce, as "commerce" is defined in the amended Clayton Act, by selling and distributing its products in various States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent corporation 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, or contracted to be furnished, by or through such customers in connection with the handling, sale or offering for sale of "Emerson" appliance products sold to them by respondent corporation. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing with said favored customers in the distribution of such products.

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PAR. 5. As an example of the practices alleged herein, respondent corporation has granted certain large retail customers located in New York City substantial payments or allowances in connection with the advertising of "Emerson" brand appliance products primarily in newspapers. Such payments or allowances were not offered or otherwise made available on proportionally equal terms to all other customers competing with said favored customers. Among the favored customers receiving payments or allowances in 1958 which were not offered to other competing customers on proportionately equal terms in connection with the promoting and advertising of respondent corporation's appliance products were:

<i>Customer:</i>	<i>Approximate payment received</i>
Davega Stores Corporation -----	\$19,547
Korvette -----	17,593
Gimbels -----	12,925
Vim Electric Company, Inc.-----	11,806
R. H. Macy & Co.-----	6,100

PAR. 6. The acts and practices of respondents as alleged above, constitute violations of subsection (d) of Section 2 of the amended Clayton Act.

ORDER VACATING CONSENT AGREEMENT

The Commission on October 24, 1962, having accepted a consent agreement in the above-captioned matter containing an order directing respondents to cease and desist from certain practices constituting violations of Section 2(d) of the Clayton Act, as amended, which agreement provided that the order was not to become effective until the Commission issued an order "deciding on the merits the issues involved" in *Admiral Corp.*, F.T.C. Docket No. 7094 [p. 375 herein]; and the Commission on April 7, 1965, having dismissed the Section 2(d) charges in Docket 7094 not on the merits (see p. 424 of the Commission's opinion) but on the ground that respondent had been denied an adequate opportunity to present its defense; and the Commission having no reason to believe that the present respondents are now engaged in, or intend to resume, any practices forbidden by the terms of the Commission's cease and desist order herein; and it further appearing that equitable treatment of competitors, and the public interest, would not be advanced by making a cease and desist order effective at this time against the respondents:

It is ordered, Pursuant to Section 3.27 of the Commission's Rules (effective August 1, 1963), that the consent agreement, jurisdictional findings, and cease and desist order in the above-captioned matter be,

