

IN THE MATTER OF  
NORMAN M. MORRIS CORPORATION

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

*Docket C-920. Complaint, July 26, 1965—Decision, July 26, 1965*

Consent order requiring a New York City importer and distributor of "Omega" and "Tissot" watches, to cease discriminating among its competing customers in the payment of advertising and promotional allowances, in violation of Sec. 2(d) of the Clayton Act.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended; and therefore, pursuant to

## Complaint

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Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Norman M. Morris Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 375 Park Avenue, New York 22, New York. Respondent is principally engaged in the business of importing and selling watches under the "Omega" and "Tissot" brands, two of the most popular watch brands in the United States. Respondent is the sole United States importer of such products, and its gross sales during each of the years 1959 and 1960 were approximately \$5,000,000.

PAR. 2. Respondent has sold and distributed and now sells and distributes its products in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to customers throughout the United States, many of which are engaged in substantial competition with each other in the resale of products purchased from respondent.

PAR. 3. Respondent's products are sold to consumers principally by retail jewelry and department stores. In each local trading area, all retailers handling respondent's products are engaged in substantial competition with each other in the resale of respondent's products as well as in the resale of products of other suppliers. Such competition is characterized particularly by substantial expenditures by many such retailers for advertising in local media of general circulation, such as newspapers, radio and television, as well as for other forms of advertising, such as direct mailings, distribution of promotional material at point of sale, and maintenance of elaborate displays at point of sale. Respondent encourages retailers handling its products to feature such products in their advertising by furnishing assistance in the form of a published cooperative advertising plan. Under the terms of such plan, respondent reimburses retailer customers for half their cost, up to 5% of their purchases, for newspaper, radio and television advertisements featuring "Omega" brand watches exclusively.

PAR. 4. In addition to the advertising assistance described in Paragraph Three hereof, respondent has also 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 products sold to them by respondent. Such payments were not made available on proportionally equal terms to all other

customers of respondent competing in the distribution of such products.

PAR. 5. As a specific example of the practices alleged herein, respondent has paid substantial sums of money for advertising its products in the "Robert Carp" jewelry catalogs, which are distributed by thirty-three of respondent's retail jewelry store customers located in thirty-three different cities in twenty-three States and the District of Columbia. Such catalogs are distributed free of charge to the public by direct mailing by such retailers, and, when so distributed, bear the imprint of the particular retailer distributing them. Distributing retailers use such catalogs as a method of promoting their own sales generally and as a method of promoting their own sales of the products advertised therein specifically. Payments for such advertising by respondent and by other suppliers have the effect of subsidizing a substantial portion of the cost of production of such catalogs, thus making such advertising available to distributing retailers for substantially less than its actual cost of production.

In each of the years 1959 and 1960, respondent paid \$1,750 for advertising in such catalogs which were distributed during the Christmas season, a prime retail sales period for respondent's products. Such payments were outside the scope of respondent's published cooperative advertising plan in that catalogs were expressly excluded by the terms of the published plan, in that catalog advertising did not provide the exclusive advertisement required by the terms of the published plan, in that the criteria of the published plan limiting the amounts of respondent's money payments were not applied to the catalog advertisements, and in that payments for such catalog advertising were made in addition to payments made under the terms of the published plan directly to retailers distributing such catalogs in connection with other advertising services and facilities furnished by or through such retailers.

As a further example of the practices alleged herein, respondent has failed to administer its published cooperative advertising plan in such a manner that the terms of such plan are applied to all customers. Under the terms of the plan, respondent's maximum payment to customers for cooperative advertising is 50% of the cost of such advertising or 5% of the customer's annual purchases, whichever is lower. Several customers have been paid by respondent, for cooperative advertising, sums greatly in excess of 5% of their annual purchases. For example, S. Kind, a retail jewelry store in Philadelphia which is one of the distributors of the "Robert

Carp" catalogs, made purchases from respondent in 1959 totalling \$3,141 and received cooperative advertising payments directly from respondent during that year totalling \$1,243.20.

Payments for catalog advertising, or the benefits thereof, were not made available on proportionally equal terms to many of respondent's other customers who competed in the distribution of respondent's products with customers distributing such catalogs. Payments for cooperative advertising, made by respondent under its published cooperative advertising plan, were not made available on proportionally equal terms to all of respondent's other customers competing in the distribution of respondent's products with those customers which received payments under such plan in excess of 5% of their purchases from respondent.

Many of such other customers, during the Christmas season, distributed other catalogs, and many of such other customers regularly engaged in substantial advertising in other forms during the Christmas season and throughout each year.

PAR. 6. The acts and practices of respondent, as alleged above, are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

#### DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, 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 Norman M. Morris Corporation is a corporation organized and existing under the laws of the State of New York,

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with its principal office and place of business located at 375 Park Avenue, New York 22, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

## ORDER

*It is ordered*, That respondent Norman M. Morris Corporation, a corporation, and its officers, directors, employees, agents, and representatives, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Clayton Act, as amended, of watches or any other products, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to or for the benefit of any customer as compensation or in consideration for any services or facilities consisting of advertising or other publicity in a catalog, newspaper, broadcast or telecast or in any other advertising medium, furnished or distributed, directly or through any corporate or other device, by such customer, in connection with the processing, handling, sale, or offering for sale of any products manufactured, imported, sold, or offered for sale by respondent, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products.

*It is further ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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