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IN THE MATTER OF  
DAN MILLSTEIN, INC.

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

*Docket C-1020. Complaint, Nov. 23, 1965—Decision, Nov. 23, 1965\**

Consent order requiring a New York City wearing apparel manufacturer 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.

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\*For Commission's opinion and Commissioner Elman's dissenting statement accompanying this decision, see pp. 393, 403, 407 herein.

## COMPLAINT

The Federal Trade Commission, having reason to believe the respondent named in the caption hereof has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereto is in the interest of the public, the Commission hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The respondent is a corporation engaged in commerce, as "commerce" is defined in the amended Clayton Act, and sells and distributes its wearing apparel products from one state to customers located in other states of the United States. The sales of respondent in commerce are substantial.

PAR. 2. The respondent in the course and conduct of its business in commerce 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 and facilities furnished by or through such customers in connection with their sale or offering for sale of wearing apparel products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing with favored customers in the sale and distribution of respondent's wearing apparel products.

PAR. 3. Included among, but not limited to, the practices alleged herein, respondent has granted substantial promotional payments or allowances for the promoting and advertising of its wearing apparel products to certain department stores and others who purchase respondent's said products for resale. These aforesaid promotional payments or allowances were not offered and made available on proportionally equal terms to all other customers of respondent who compete with said favored customers in the sale of respondent's wearing apparel products.

PAR. 4. The acts and practices alleged in Paragraphs One through Three are all in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

## DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and subsequently having determined that complaint should issue, and the respondent having entered into an agreement containing an order to cease and desist from the practices being

investigated and having been furnished a copy of a draft of complaint to issue herein charging it with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and

The respondent having executed the agreement containing a consent order which agreement contains an admission of all the jurisdictional facts set forth in the complaint to issue herein, and a statement that the signing of the said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as set forth in such complaint, and also contains the waivers and provisions required by the Commission's rules; and

The Commission having considered the agreement, hereby accepts the same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Dan Millstein, 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 205 West 39th Street, New York, 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 Dan Millstein, 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 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 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.

Commissioner Elman dissenting.

## Complaint

IN THE MATTER OF  
THE DRIVE-X COMPANY, INC.  
TRADING AS THE ELMO COMPANY ET AL.

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

*Docket 8615. Complaint, Feb. 14, 1964—Decision, Dec. 1, 1965*

Order dismissing the complaint against an Iowa concern dealing in drugs and medical devices and vacating the initial decision of the hearing examiner issued February 4, 1965, for the reason that the Commission determined it was no longer in the public interest to continue the proceeding.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Drive-X Company, Inc., a corporation trading as The Elmo Company, and Craig Sandahl and Richard Johann, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Drive-X Company, Inc., trading as The Elmo Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, with its principal office and place of business at Second and Main Streets, in the city of Madrid, State of Iowa.

Respondents Craig Sandahl and Richard Johann are individuals and are officers of said corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and have been for more than one year last past, engaged in the sale and distribution of certain preparations containing drugs and devices as the terms "drug" and "device" are defined in the Federal Trade Commission Act. The combination of the preparations and the devices is referred to by respondents as the "Elmo Palliative Home Treatment."

The designations used by respondents for their said preparations, the formulae and directions for use thereof and the designations, descriptions and directions for use of their said devices are as follows: