

IN THE MATTER OF
THE CELOTEX CORPORATION

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(a) OF THE CLAYTON ACT AND THE FEDERAL TRADE
COMMISSION ACT

Docket 7907. Complaint, May 20, 1960—Decision, Dec. 15, 1965

Order dismissing a complaint which charged an Illinois manufacturer of building and insulating materials with unlawfully discriminating in price among its customers and suppressing competition.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating, the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C. § 13), and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest

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of the public, hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. The Celotex Corporation, respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 120 South LaSalle Street, Chicago, Illinois.

PAR. 2. Respondent is now, and for many years has been, engaged in the manufacture, distribution and sale of building and insulating materials, such as rock wool, gypsum plaster, lath, wall board and roofing, including asphalt roofing products. It sells these products for use, consumption or resale within the various states of the United States. Respondent sells and distributes its products under the brand name "Celotex."

Respondent's sales are and have been substantial. Its total net sales during the fiscal year ended October 31, 1958, were \$67,726,783; its sales of asphalt roofing products have been in excess of \$10,000,000 annually.

PAR. 3. Respondent is one of the major manufacturers of asphalt roofing products in the United States, owning and operating a total of three asphalt roofing plants situated at Cleveland, Ohio; Madison, Illinois; and Los Angeles, California. In addition, respondent operates a dry felt mill at Avery, Ohio, and a dry felt mill in connection with its Los Angeles, California, plant.

PAR. 4. In the course and conduct of its business, respondent has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Act. It transports, or causes to be transported, its roofing products from the State of manufacture to purchasers located in other States. There is and has been a constant stream of trade and commerce in these products between and among the various States of the United States.

PAR. 5. In the course and conduct of its business in commerce, respondent is now, and has been, in substantial competition with other corporations, individuals, partnerships and firms engaged in the manufacture, sale and distribution of asphalt roofing products.

PAR. 6. In the course and conduct of its business in commerce, and particularly during and since 1956, respondent has discriminated in price between and among different purchasers of its

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asphalt roofing products of like grade and quality. This it has done by selling to some purchasers at prices higher than those charged other purchasers.

Among and typical of the discriminations alleged are transactions relating to 15-pound and 30-pound asphalt saturated felt, in 60-pound rolls (sometimes hereinafter referred to as asphalt felt), and 215-pound asphalt shingles (12-inch standard 3-tab strip shingles, sometimes hereinafter referred to as shingles). These products respondent has sold to customers in certain geographical areas of the United States at prices substantially higher than those charged others of its customers outside such geographical areas.

In the sale of the aforesaid products, particularly during and since 1956, respondent has adopted and used a pricing system and pattern resulting in lower prices in the southeastern and southwestern areas of the United States than in other areas. This it has accomplished through a series of price lists and price bulletins establishing various systems of area and zone pricing, and through the application of varying discounts to an ostensibly uniform price.

For example, in September 1956, respondent charged certain customers in Michigan \$6.54 per square for shingles while, for products of like grade and quality, it charged certain customers in Arkansas \$6.03 per square. On asphalt felt, during the same period, certain customers in Wisconsin were charged \$2.44 per roll, while, for products of like grade and quality, certain customers in Arkansas were charged \$2.32 per roll.

Similarly, in January 1958, certain customers in Tennessee were charged \$1.68 per roll for asphalt felt while, for products of like grade and quality, certain customers in Wisconsin were charged \$2.34 per roll. In the sale of shingles during the same period, certain customers in Tennessee were charged \$4.92 per square, while, for products of like grade and quality, certain customers in Indiana were charged \$6.85 per square.

These examples are illustrative of the pricing practices of respondent, and other price lists and bulletins, and sales made pursuant thereto, during the period 1956 to date reflect a similar pattern of discrimination.

PAR. 7. The effect of these discriminations in price, as alleged in Paragraph Six of this complaint, has been or may be to divert to respondent, or to respondent's customers, substantial business from competitors; and such discriminations are and have been sufficient to divert substantial business from competitors to respondent, or to respondent's customers in the future.

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Where business has not been actually diverted, competitors have been required to meet, directly or indirectly, the discriminatory prices of respondent, with the result, actual or potential, of substantially impairing their profits and consequently lessening their ability to compete.

Thus, the effect of the aforesaid discriminations in price, as alleged in Paragraph Six of this complaint, has been or may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which respondent, its customers and its competitors are engaged, or to injure, destroy, or prevent competition with respondent or its customers.

PAR. 8. The foregoing discriminations in price by respondent are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PAR. 9. Paragraphs One through Five of Count I hereof are incorporated herein by reference and made a part of this Count as fully and with the same effect as if set forth herein verbatim, except that the reference to the Clayton Act in Paragraph Four of Count I is eliminated herein, and reference to the Federal Trade Commission Act is substituted therefor.

PAR. 10. In the course and conduct of its business in commerce, and particularly since 1956, respondent has sold or offered to sell and is selling or offering to sell asphalt roofing products at below cost prices or at unreasonably low prices with the intent, purpose and effect of injuring, restraining, suppressing, and destroying competition in the sale of such products in the southeastern and southwestern areas of the country.

For example, in the sale of 15-pound and 30-pound asphalt saturated felt, during and subsequent to March 1958, respondent sold to certain customers in Tennessee at delivered prices of \$1.63 per roll. It is alleged that such price was an unreasonably low price or was below respondent's cost of manufacture, sale and delivery, and that sales at such price were made for the purpose and with the intent and effect aforesaid.

PAR. 11. The effect and result of the pricing practices of respondent, as alleged in Paragraph Ten hereof, have been, or may be, substantially to lessen competition in the distribution and sale of asphalt roofing products, to the injury and prejudice of the public, and to the injury and prejudice of respondent's competitors,

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as aforesaid; and such pricing practices constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Bernard M. Williamson and *Mr. Bernard Turiel* for the Commission.

Mr. J. B. Robinson, attorney for the respondent, *Dallstream, Schiff, Hardin, Waite & Dorschel*, 231 South LaSalle St., Chicago 4, Ill.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

OCTOBER 29, 1965

I. *The Complaint*

The complaint in this proceeding, issued on May 20, 1960, charges in Count I that the respondent named above, in the course and conduct of its business in commerce, during and since 1956, discriminated geographically in the price charged different purchasers of its asphalt roofing products of like grade and quality, in violation of Section 2 of the Clayton Act, as amended.

The complaint further alleges in Count II that respondent has sold or offered to sell asphalt roofing products at below cost prices or at unreasonably low prices with the intent, purpose, and effect of injuring, restraining, suppressing, and destroying competition in the sale of such products in the southeast and southwest areas of the United States, in violation of Section 5 of the Federal Trade Commission Act.

II. *The Answer*

Respondent, in its answer, denied the principal allegations of the complaint and affirmatively alleged that its lower prices in the southeast and southwest portions of the United States to any purchaser therein were made in good faith to meet an equally low price of a competitor or competitors.

III. *Hearings*

A hearing was held in Chicago, Illinois, on October 25 and 26, 1960. Counsel supporting the complaint stated at that time, however, that additional hearings would be required. Subsequently, in response to a motion by counsel supporting the complaint, and because of the similarity between the present proceeding and that *In the Matter of Lloyd A. Fry Roofing Company*, Docket No. 7908

[p. 217 herein], an order was issued by the hearing examiner to the effect that no further hearings would be scheduled in the present proceeding pending the decision of the Commission in the Lloyd A. Fry Roofing Company case.

IV. *Motion to Dismiss and Findings as to the Facts*

On September 21, 1965, subsequent to the Commission's decision in the Fry case, *supra*, counsel supporting the complaint moved that the present proceeding be dismissed without prejudice to the right of the Commission to bring a new proceeding if the facts should so justify. In their supplemental statement to the motion to dismiss, filed on October 14, 1965, counsel supporting the complaint presented reasons and factual statements in support of their motion to dismiss, as follows:

Subsequent to the issuance of the complaint in this matter on May 20, 1960, additional investigation disclosed facts inconsistent with some of the allegations contained in the complaint. For example, the competitive significance of Celotex in the southeastern and southwestern markets of the United States has significantly diminished since 1956. During the period 1957 to 1959, the company stopped serving practically the entire southeastern and southwestern markets and in 1961 Celotex disposed of its only two asphalt roofing plants located east of the Rocky Mountains. Thus Celotex is no longer a competitive factor in the region east of the Rocky Mountains, the area involved herein.

The foregoing statement of facts has not been contradicted or questioned by the respondent, and it is accepted as correct and adopted as the findings of fact in this proceeding.

V. *Order*

Because of the above findings as to the facts,

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to initiate further proceedings against the respondent, should future events so warrant.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 15th day of December, 1965, become the decision of the Commission.

Without the concurrence of Commissioner MacIntyre.

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IN THE MATTER OF
ROBERT CARP, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1023. Complaint, Dec. 16, 1965—Decision, Dec. 16, 1965*

Consent order requiring a nonprofit membership corporation located in New York City and its constituent members in the retail jewelry business, to cease knowingly inducing and receiving discriminatory payments for any service, facility or advertising when such payments are not made available on proportionally equal terms to competing retailers.

COMPLAINT

The Federal Trade Commission has reason to believe that the respondents named in the caption hereof have been and are now engaging in unfair acts and practices in commerce and in an unfair method of competition in violation of the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45); and therefore, it issues this complaint, stating its charges in that respect as follows:

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THE RESPONDENTS

1. Respondent Robert Carp, Inc., 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 630 Fifth Avenue, New York, New York.

2. Respondent Robert Carp is an individual, and his address is the same as that of respondent Robert Carp, Inc. Said individual respondent formulates, directs and controls the acts, practices and policies of said corporate respondent. Said individual respondent caused said corporate respondent to be organized for the purpose of conducting, in corporate form, the business he had formerly conducted as a sole proprietorship.

3. Respondent National Jewelers Group, Inc., is a nonprofit membership corporation organized and existing under the laws of the State of New York, and its address is the same as that of respondent Robert Carp, Inc.

4. The following respondents (hereinafter referred to collectively as the "NJG members") are members of respondent National Jewelers Group, Inc.:

i. Coleman E. Adler & Sons, Inc., a corporation organized and