

IN THE MATTER OF

PECK AND PECK

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

Docket C-1068. Complaint, May 19, 1966—Decision, May 19, 1966

Consent order requiring a New York City wearing apparel chainstore to cease knowingly inducing or receiving discriminatory promotional allowances from its suppliers, in violation of Section 5 of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the respondent herein, Peck and Peck, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Its office and principal place of business is located at 260 Park Avenue South, New York, New York.

PAR. 2. Respondent, directly and by means of subsidiary corporations, is principally engaged in the purchase, sale and distribution of retail merchandise, including wearing apparel and accessories such as, but not limited to, costume jewelry, handbags, millinery, gloves, and leather goods. The capital stock of such subsidiaries is wholly owned by respondent and, unless otherwise required by state law, the officers and directors of respondent and its subsidiaries are identical. Respondent exercises complete domination and control over its subsidiaries, formulating, directing, and controlling their acts and practices, including the acts and

practices complained of herein. Such domination and control renders the acts and practices of the subsidiaries to all intents and purposes the acts and practices of respondent. It sells to thousands of consumers through 66 retail outlets located in 16 States and the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is, and has been for several years last past, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondent purchases products from suppliers located in various States of the United States, and in some cases causes such products to be shipped from such suppliers to itself across State lines. In other cases, in response to orders placed by respondent with suppliers for future delivery of products, such products are caused to be manufactured and to be transported across State lines to such suppliers for delivery to respondent. The products which respondent receives from its suppliers are shipped by respondent across State lines to its retail outlets for resale to consumers. Respondent advertises the products it offers to sell in various media which have an interstate circulation.

Respondent's suppliers also sell, and for several years last past have sold, products to other retailer customers for resale to consumers. Such suppliers ship or cause to be shipped such products across State lines to those customers.

Thus there is and has been, during all periods relevant herein, a continuous course of trade in commerce in such products.

PAR. 4. In the course and conduct of its business, respondent is now, and has been, in active competition with other corporations, partnerships, firms and individuals, including the aforesaid customers of respondent's suppliers, in the purchase, sale and distribution of such products within the various trading areas wherein it does business.

PAR. 5. In the course and conduct of its business, respondent, directly or indirectly, induces or receives, and has induced or received, from many of its suppliers various payments, allowances or other things of value to or for its benefit as compensation or in consideration for services or facilities furnished by or through it in connection with the handling, sale or offering for sale of the products of such suppliers. Such payments, allowances, or other things of value are and were not made available by such suppliers on proportionally equal terms to such suppliers' aforesaid customers competing with respondent in the sale and distribution of the suppliers' products.

For example, respondent causes, and has caused, to be published catalogs, direct mailers, statement enclosures, and newspaper and magazine advertisements which advertise respondent's outlets and its trade name. Such advertisements also advertise one or more of its suppliers' products which are available at respondent's outlets, but in most instances the products bear respondent's private brand and neither the suppliers' identities nor brands are mentioned in the advertisements. In many instances the suppliers of the advertised product or products pay or allow respondent payments, allowances, or other things of value which offset, wholly or in substantial part, the total cost of such advertising. At the same time the suppliers do not make available such payments, allowances, or other things of value on proportionally equal terms to customers competing with respondent in the resale of the suppliers' products. In fact, during 1962, among the many suppliers making such payments to respondent, a sampling of 22 such suppliers disclosed that those suppliers paid respondent approximately \$109,000, with several of such suppliers paying over \$10,000 each and one paying over \$20,000, while at the same time they did not make such payments available on proportionally equal terms to customers competing with respondent.

One instance of the above-described acts or practices involved respondent's dealings with a manufacturer of women's sweaters. During the year 1963 an agreement was reached between this supplier and respondent whereby the supplier agreed to pay one-half the production costs and all the space costs of four of respondent's national magazine advertisements, and respondent agreed to expend a comparable amount of money for newspaper advertisements, all of which advertisements were to advertise respondent's outlets and to feature the supplier's products. Pursuant to such agreement the supplier paid respondent the amount of \$14,170.51. The agreement was reached prior to any order being placed by respondent with the supplier for the products to be advertised, and the amount of money paid by the supplier was not related to the dollars or units of either any past or expected future sales to respondent. At the same time the supplier did not make available to competitors of respondent such payments on proportionally equal terms.

PAR. 6. Respondent, in so directly or indirectly inducing or receiving the aforesaid payments, allowances or other things of value from such suppliers, knew or should have known that such suppliers were not making available to their customers competing

with respondent in the resale and distribution of such products such payments, allowances or other things of value on proportionally equal terms.

PAR. 7. The acts and practices, as above alleged, are all to the prejudice of the public and constitute unfair methods of competition or unfair acts or practices within the intent and meaning of, and in violation of, Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, 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 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 Peck and Peck, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 260 Park Avenue South, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Peck and Peck a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with any purchase in commerce, as "commerce" is defined in the Fed-

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eral Trade Commission Act, of products for resale, do forthwith cease and desist from:

Inducing and receiving, receiving, or contracting for the receipt of, anything of value from any supplier as compensation or in consideration for advertising services or facilities furnished by or through respondent in magazines, newspapers, catalogs, brochures, enclosures, or mailing pieces in connection with the handling, sale or offering for sale of products purchased from such supplier, when respondent knows or should know that such compensation or consideration is not made available by such supplier on proportionally equal terms to all of its other customers competing with respondent in the sale and distribution of such supplier's 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.
