

IN THE MATTER OF

TIMES SQUARE STORES CORPORATION ET AL.

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

Docket C-1097. Complaint, Aug. 15, 1966—Decision, Aug. 15, 1966

Consent order requiring a wholesaler and a retailer of general merchandise both located in Brooklyn, N.Y., to cease knowingly inducing and receiving discriminatory promotional allowances from their suppliers.

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 respondents, Times Square Stores Corporation, and The Seedman Company, Inc., have violated and are 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 thereof would be in the interest of the public, issues its complaint charging as follows:

PARAGRAPH 1. Respondent, Times Square Stores Corporation,

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hereinafter sometimes referred to as Times Square, is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 314 Scholes Street, Brooklyn, New York.

Respondent is now and has been for many years engaged in the sale at retail, directly and through subsidiaries, a line of general merchandise (hereinafter referred to as merchandise) which includes automotive supplies and accessories, hardware, house furnishings, sporting goods, major appliances, among other things. Respondent's sales are substantial, exceeding \$13,700,000 annually.

PAR. 2. Respondent, The Seedman Company, Inc., hereinafter sometimes referred to as Seedman, is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 314 Scholes Street, Brooklyn, New York.

Respondent is now and has been for many years engaged in the sale at wholesale of a general line of merchandise including automobile supplies and accessories, housewares, house paints, radios, batteries, electrical appliances and supplies, toys and sporting goods, among other things. Respondent's sales are substantial, totaling more than \$1,400,000 annually.

PAR. 3. In the course and conduct of their business respondents have engaged in, and are presently engaged in commerce, as "commerce" in defined in the Federal Trade Commission Act. Respondents purchase the merchandise from suppliers throughout the United States and cause such merchandise to be shipped from the states from which it is purchased for the purpose of reselling said merchandise through its retail stores in the New York metropolitan area.

PAR. 4. In the course and conduct of their business as aforesaid, respondents have been for many years, and are now, in substantial competition in the sale and distribution of merchandise, as described above, with other corporations, persons, firms and partnerships.

PAR. 5. In the course and conduct of their business as aforesaid, respondents have induced or received from their suppliers so engaged in commerce, payments of value which accrued to respondents' benefit, for services or facilities furnished by or through respondents in connection with the handling, sale and offering for sale of the said products of such seller suppliers which respondents knew, or had reason to know, were not offered or made

available on proportionally equal terms to respondents' competitors also purchasing from such same seller suppliers and that such same seller suppliers were in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

PAR. 6. In the course and conduct of their business in commerce respondents have initiated several promotional campaigns in which they solicited and received from some of their seller suppliers payments for participation in these promotional campaigns.

For example, in 1961 the respondents notified a number of their suppliers that in order to give their products adequate representation in an advertising campaign connected with the opening of a new store, a participation contribution would be appreciated. The amount of the contribution solicited varied from \$25 to \$200, with the total amount solicited being in excess of \$28,000. As a result of this solicitation the respondents received from their suppliers contributions in excess of \$5,000.

And, in 1962 the respondents notified a number of their suppliers that they were planning a saturation advertising program and invited manufacturers to be part of their aggressive sales promotional program and to cooperate toward expanding the program. A promotional contribution of from \$25 to \$200 was again solicited, and this time the amount requested was in excess of \$27,000. As a result of this solicitation the respondents received approximately \$4,600.

The money received from these solicitations was included in their general fund and was often used for purposes other than those for which the solicitations were made.

PAR. 7. The acts and practices, as alleged above, are all to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in

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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 respondents 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 Times Square Stores Corporation is a corporation organized, existing and doing business under the laws of the State of New York, with its principal place of business located at 314 Scholes Street, Brooklyn, New York.

Respondent The Seedman Company, Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 314 Scholes Street, Brooklyn, New York.

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

ORDER

It is ordered, That respondents, Times Square Stores Corporation, a corporation, its officers, employees, agents and representatives; The Seedman Company, Inc., a corporation, its officers, employees, agents and representatives; jointly or severally, directly or through any corporate or other device, in or in connection with the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any product for resale by any respondent do forthwith cease and desist from:

Inducing, receiving, inducing and receiving, or contracting for the receipt of, anything of value for the benefit of any respondent or corporation, from any supplier as compensation or in consideration for any display or any promotional services or facilities furnished by or through such respondent in connection with the handling, sale, or offering for sale of products purchased from such suppliers, when any respondent knows or should know that such compensation or consideration is not made available by such suppliers on proportionally equal terms to all other customers competing with the benefitted respondent in the sale and distribution of such suppliers' products.

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