

divested and used at said plant in the manufacture of corrugated shipping containers (including without limitation the machinery and equipment now used at said plant in such manufacture), in a manner contemplating the operation of the plant so divested by the purchaser as a going concern in the manufacture and sale of corrugated shipping containers.

IN THE MATTER OF

GRABER MANUFACTURING COMPANY, INC., ET AL.

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

Docket 8038. Complaint, July 12, 1960—Decision, May 2, 1967

Consent order requiring a Middleton, Wisc., manufacturer of drapery hardware and related products to cease discriminating in price among competing resellers of its products.

COMPLAINT*

The Federal Trade Commission, having reason to believe that the named respondents have violated and are now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Graber Manufacturing Co., Inc., is a

*Respondent Graber Manufacturing Company, Inc., erroneously referred to in the complaint as Graber Manufacturing Co., Inc.

corporation organized and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 2615 University Avenue, Middleton, Wisconsin. Individual respondents John N. Graber, Joseph V. Graber and Marie Graber are now, and were, during all times hereinafter stated, officers of said corporate respondent. These individual respondents are and have been controlling and directing the operations of the corporate respondent during the period from 1955 to date.

Respondents Marie Graber, Joseph V. Graber, and Arthur R. Jones, as trustee, are copartners, trading and doing business as Graber Company, a partnership, with their office and principal place of business located at 2615 University Avenue, Middleton, Wisconsin. Marie Graber and Joseph V. Graber are and have been directing the operations of Graber Company during the period from 1955 to date.

Respondent Arthur R. Jones is trustee of a trust established by John N. Graber and he, with the other two copartners, Joseph V. Graber and Marie Graber, shares in the benefits as one of the copartners doing business as Graber Company.

Both Graber Manufacturing Co., Inc., and the copartners, trading and doing business as Graber Company, are jointly and severally named as respondents herein.

PAR. 2. Respondent Graber Manufacturing Co., Inc., is engaged in the business of manufacturing a complete line of drapery hardware, including curtain rods, traverse rods, cafe rods and accessories. All of its production is sold or transferred to the Graber Company, the partnership, which acts as its selling agent and is engaged in the business of distributing and selling drapery hardware. Graber Company's net sales amounted to approximately \$2,000,000 in 1959.

PAR. 3. In the course and conduct of its business Graber Manufacturing Co., Inc., ships, or causes to be shipped and transported, its drapery hardware from the State where such products are manufactured to branches of Graber Company, its selling agent, located in other States.

In the course and conduct of its business Graber Company ships, or causes to be shipped and transported, its drapery hardware from the State where such products are manufactured, or are temporarily stored in anticipation of sale and shipment, to purchasers located in other States.

In the aforesaid manner and method, respondents are now, and

have been at all times referred to herein, engaged in commerce, as "commerce" is defined in the amended Clayton Act.

Such products are, and have been, sold by respondents to purchasers for use or resale in the various States of the United States.

PAR. 4. In the course and conduct of their business in commerce, respondents have been, and are now, in competition with other corporations, partnerships, firms and individuals engaged in the manufacturing, selling and distributing of drapery hardware.

Many of the purchasers of respondents' products are competitively engaged with each other and with customers of respondents' competitors in the resale of drapery hardware.

PAR. 5. Respondents sell their drapery hardware primarily to retailers and also to wholesalers who resell it to retailers. When sales are made to such wholesalers and delivered to them, respondents customarily grant a 20% discount from the list price charged retailers. When sales are made to such wholesalers but delivery is made to the wholesaler's customer, respondents customarily grant the wholesaler a 15% discount from the list price.

PAR. 6. In the course and conduct of their business in commerce, respondents have sold, and are now selling, drapery hardware to some purchasers at prices substantially higher than those charged other purchasers of these products of like grade and quality who have been, and are now, competing with said unfavored purchasers.

Illustrative of respondents' said discriminations in price are respondents' sales of drapery hardware to the Aimcee Wholesale Corporation, New York, New York. Aimcee Wholesale Corporation is a wholly owned subsidiary of Associated Merchandising Corporation, New York, New York. All of the capital stock of Associated Merchandising Corporation, both voting and nonvoting, is owned by twenty-seven large department stores located in many of the principal cities of the United States. No store owns more than one share of voting stock.

These twenty-seven department stores completely dominate and control all policies and business operations of both Associated Merchandising Corporation and its wholly owned and controlled subsidiary Aimcee Wholesale Corporation.

It is, therefore, alleged that Associated Merchandising Corporation and Aimcee Wholesale Corporation are the agents and instrumentalities of these twenty-seven member department stores for the buying of merchandise for the account of such stores, and for other purposes.

Illustrative of such sales is the sale by respondents, through Aimcee Wholesale Corporation, to L. S. Ayres & Company, Indianapolis, Indiana, one of the twenty-seven member stores, of a quantity of traverse rods (Item #3022) on August 19, 1959, at a discount of 15% off list price. This merchandise was drop shipped by respondents direct to the store of L. S. Ayres & Company, in Indianapolis, Indiana. Aimcee Wholesale Corporation retained 3% of this discount and transmitted the remainder, or 12%, to L. S. Ayres & Company. On September 14, 1959, respondents sold the same item to Ramsey Interiors, Indianapolis, Indiana, a competing retailer-purchaser, charging the list price with no discount.

PAR. 7. The effect of respondents' discriminations in price, as above alleged, may be to substantially lessen competition or tend to create a monopoly in the lines of commerce in which the respondents and their favored purchasers, respectively, are engaged, or to injure, destroy, or prevent competition with the respondents and their purchasers who receive the benefits of such discriminations.

PAR. 8. The acts and practices of the respondents, as alleged above, violate subsection (a) of Section 2 of the amended Clayton Act.

ORDER AMENDING COMPLAINT AND GRANTING MOTION TO
SUBSTITUTE, AND DECISION AND ORDER IN DISPOSITION OF
PROCEEDING

The Commission having issued its complaint in this proceeding on July 12, 1960, charging the respondents named in the caption hereof with violation of Section 2(a) of the Clayton Act, as amended, and the respondents having been thereafter served with a copy of that complaint; and

The hearing examiner having certified to the Commission a "Motion to Amend Complaint" and a proposed consent agreement, and the respondents and counsel supporting the complaint having thereafter filed a joint motion requesting that an agreement dated April 4, 1967, executed by all the respondents except John N. Graber, deceased, and by their attorney and counsel supporting the complaint, be substituted for the said agreement certified by the hearing examiner to the Commission, which executed agreement dated April 4, 1967, contains, *inter alia*, an admission of all the jurisdictional facts alleged in the complaint as amended in the manner requested in the above motion to amend, and state-

705

Order

ments that the record on which the decision of the Commission shall be based shall consist solely of such complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in such complaint; and

The Commission having determined that in the circumstances the public interest would be served by waiving, and hereby having waived, the requirement for the timely filing of notice of intent to enter into a consent agreement as prescribed by the Commission's Notice of July 14, 1961; and

The Commission, having considered the aforesaid agreement dated April 4, 1967, containing consent order, which also provides for dismissal of the complaint as to respondent John N. Graber, deceased, and respondent Arthur R. Jones, trustee, and it appearing that formulation, direction and control of the policies, acts and practices of Graber Company of which respondent Arthur R. Jones, trustee, is a copartner, is exercised solely by respondents Joseph V. Graber and Marie Graber and that dismissal of the proceeding with respect to respondent Arthur R. Jones is therefore warranted; and the Commission having duly determined that said agreement constitutes an adequate basis for appropriate disposition of this proceeding and that the aforementioned joint motion for substitution should be granted; and

The Commission having considered the aforesaid motion to amend the complaint wherein movants state that such motion is concurred in by counsel for respondents and the Commission having determined that it should be granted;

It is ordered, That the complaint herein be, and it hereby is, amended as follows:

(1) By striking from Paragraph Six thereof the first sentence of the second unnumbered paragraph, the first word of which is "Illustrative", and substituting therefor the words "Respondents' said discriminations in price involve respondents' sales of drapery hardware to the Aimcee Wholesale Corporation, New York, New York.";

(2) By striking the words "as above alleged" from the first and second lines of Paragraph Seven thereof and substituting therefor the words "as above alleged in Paragraph Six";

(3) By striking the words "as alleged above" from the first and second lines of Paragraph Eight thereof and substituting therefor the words "as alleged above in Paragraph Six and Paragraph Seven".

It is further ordered, That the proposed agreement certified to the Commission by the hearing examiner be, and it hereby is, stricken and that the agreement dated April 4, 1967, be, and it hereby is, substituted therefor and accepted.

Now, therefore, the Commission makes the following jurisdictional findings and enters the following order to cease and desist:

1. Respondent Graber Manufacturing Company, Inc., erroneously referred to in the complaint as Graber Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 7549 Graber Road, in the city of Middleton, State of Wisconsin.

Respondent John N. Graber is deceased. Respondents Joseph V. Graber and Marie Graber are officers of respondent Graber Manufacturing Company, Inc., and, together with respondent Arthur R. Jones, trustee, are copartners trading and doing business as Graber Company, a partnership, with their office and principal place of business located at 7549 Graber Road, in the city of Middleton, State of Wisconsin. Respondents Joseph V. Graber and Marie Graber solely formulate, direct and control the policies, acts and practices of Graber Company.

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

ORDER

It is ordered, That respondents Graber Manufacturing Company, Inc., a corporation, and Joseph V. Graber and Marie Graber, individually and as officers of said corporation, and Joseph V. Graber and Marie Graber, copartners, trading and doing business as Graber Company, and their respective officers, employees, assignees, and representatives, directly or through any corporate or other device, in or in connection with the sale of curtain and drapery hardware, curtain and drapery hardware components, parts and accessories, and related products in commerce, as commerce is defined in the Clayton Act, as amended, forthwith cease and desist twelve months from the date of service of this order from:

Discriminating, directly or indirectly, in the price of said products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale and distribution of respondents' products.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent Arthur R. Jones.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to respondent John N. Graber.

It is further ordered, That respondents Graber Manufacturing Company, Inc., a corporation, and Joseph V. Graber and Marie Graber, individually and as officers of said corporation, and Joseph V. Graber and Marie Graber, copartners, trading and doing business as Graber Company, shall, within sixty (60) days after the operative date 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 the order to cease and desist as set forth in this order.