

IN THE MATTER OF
HERMAN MILLER, INC.

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

Docket C-1248. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a Zeeland, Mich., furniture manufacturer to cease discriminating in price between competing customers and using any anticompetitive merchandising plan.

COMPLAINT

The Federal Trade Commission, having reason to believe that Herman Miller, Inc., 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 (U.S.C., Title 15, Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Herman Miller, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 140 McKinley Street, Zeeland 2, Michigan.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of furniture and furniture products. These products are sold to a large number of customers located throughout the United States and in foreign lands. Its sales of these products are substantial, amounting to about \$12.7 million for the year ending May 31, 1966.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaged in commerce, as "commerce" is defined in the Clayton Act. Respondent employs interstate means of communication with its customers in the consummation of sales and in the settling of accounts. Respondent ships, or causes to be shipped, its products from the states in which said products are manufactured to its customers, or to purchasers from its customers, located in other States of the United States and the District of Columbia. Thus, there is and has been, at all times mentioned herein, a continuous course of trade in commerce in said products across State lines between respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, respondent has been and now is discriminating in price, directly or indirectly, between different purchasers of its furniture and furniture products of like grade and quality by selling said products at higher prices to some purchasers than it sells said products to other purchasers, many of whom have been and now are in competition with the purchasers paying the higher prices.

PAR. 5. Included among, but not limited to, the discriminations in price as above alleged, are the following:

For several years last past respondent has priced its products in terms of net prices (or trade prices). Some classes of respondent's customers purchase at said net prices while other classes of customers purchase at net prices less discounts ranging up to approximately 25%. Respondent has also published dealer prices at which certain classes of customers purchase products from respondent. Dealer prices generally amount to the net prices less a discount of 25%. Although the manner of stating such price differences between customers has been changed by respondent from time to time, in effect the amounts of such differences have remained essentially the same over the last several years. Various members of each class of customers compete with each other and with various members of each of the other classes.

PAR. 6. The effect of respondent's discriminations in price as alleged herein has been or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which

respondent's customers are engaged, or to injure, destroy, or prevent competition with purchasers from respondent who receive the benefit of such discriminations.

PAR. 7. The aforesaid acts and practices constitute violations of 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, approved June 19, 1936.

COUNT II

PAR. 8. Paragraphs One through Three 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 Three of Count I is eliminated herein and references to the Federal Trade Commission Act is substituted therefor.

PAR. 9. Respondent competes with other furniture manufacturers for the business of dealers and other purchasers of furniture and furniture products, except to the extent that competition has been hindered, lessened, restricted, or suppressed by the unfair methods of competition and unfair acts or practices hereinafter set forth.

PAR. 10. Respondent's customers are in competition with other customers in the resale of respondent's products, except to the extent that competition has been hindered, lessened, restricted, or suppressed by the unfair methods of competition and unfair acts or practices hereinafter set forth.

PAR. 11. For several years last past respondent and certain of its customers have been and now are engaged in unfair methods of competition and unfair acts or practices in commerce by cooperating, combining, conspiring, agreeing, entering into, or carrying out understandings, or following a planned common course of action, or course of dealing to hinder, lessen, restrict, or suppress competition in the production, sale, and distribution of furniture and furniture products.

PAR. 12. Pursuant to and as a part and parcel of said unfair methods of competition and unfair acts or practices, respondent and its customers have entered into and effectuated programs, plans, or policies, included among which, but not limited to, is the following:

From time to time those customers which are granted the maximum rate of discount by respondent have occasion to specify, or cause to be specified, the furnishings to be used in rooms or

buildings, which furnishings are to be purchased by awarding the sale of respondent's products to the person bidding or quoting the lowest prices. When, upon such an occasion, one of respondent's customers registers with respondent the fact that it has specified, or caused to be specified, respondent's products to be used on such a job, respondent notifies its other maximum discount customers in the same trading area of the fact that said registration has been made. Such other customers are thereby notified that respondent will allow the maximum rate of discount on that particular job only to the registering customer and that such other customers will be allowed a substantially reduced rate of discount should they be invited to bid or otherwise quote prices on the job. Customers other than the registering customer which are invited to bid or otherwise quote prices on the job are required to confirm with respondent the reduced rate of discount they will be granted. On some occasions, respondent also has expressly requested customers other than the registering customer to refrain from bidding. Such practice results in the registering customer's favoring respondent's products over other manufacturers' products and in submitting the lowest bid or quoting the lowest prices and being awarded the sale.

PAR. 13. The capacity, tendency or effect of the aforesaid unfair methods of competition and unfair acts or practices in commerce has been, is now, and may be:

1. To hinder, lessen, restrict, or suppress competition in the distribution and sale of furniture and furniture products.
2. To hinder, lessen, restrict, or suppress competition among various of respondent's customers and thereby to deprive said customers of their freedom to sell respondent's products at prices which, in their judgment, would be warranted by trade conditions.
3. To limit, allocate, or restrict the persons or classes of persons to whom respondent's customers may sell respondent's products.
4. To deny purchasing consumers or users of respondent's products the right to receive competitive price quotations on respondent's products from respondent's customers.
5. To deprive the purchasing public of the advantages which it would derive if competition between and among customers of respondent in the sale of respondent's products were not restrained and restricted in the manner and by the methods, acts or practices hereinbefore set forth.
6. To foreclose markets and access to markets to competitors of respondent engaged in the manufacture, distribution and sale of furniture and furniture products.

7. To substantially enhance the prices which the public is required to pay for furniture and furniture products.

8. To mislead purchasing consumers or users of furniture and furniture products into believing that respondent's customers, in specifying respondent's products, are making disinterested selections from various competing lines.

PAR. 14. The acts and practices of respondent, as hereinbefore set forth are to the prejudice and injury of the public and constitute unfair methods of competition and unfair acts or 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 respondent named in the caption hereof with violation of the Federal Trade Commission Act and subsection (a) of Section 2 of the Clayton 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 Herman Miller, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at 140 McKinley Street, Zeeland 2, Michigan.

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 Herman Miller, Inc., a corporation, and its officers, representatives, agents and employees, di-

rectly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution of furniture and furniture products in commerce, as "commerce" is defined in the Clayton Act, as amended, do on and after December 1, 1967 cease and desist from:

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

It is further ordered, That respondent Herman Miller, Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in, or in connection with, the offering for sale, sale, or distribution of furniture and furniture products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Putting into effect, maintaining or enforcing any merchandising or distribution plan or policy under which contracts, agreements, or understandings are entered into with its customers which have the purpose or effect of requiring or inducing, directly or indirectly, any of its customers to refrain from bidding or otherwise quoting prices which are effectively designed to secure for such customers the sale of respondent's products.

2. Entering into, continuing, or enforcing, or attempting to enforce, any contract, agreement or understanding with any of its customers for the purpose or with the effect of establishing or maintaining any merchandising or distribution plan or policy prohibited by paragraph 1 of this order.

3. Engaging, either as part of any contracts, agreements, or understandings with any of its customers, or individually or unilaterally, in the practice of:

- (a) Notifying, or otherwise communicating to, its customers, directly or indirectly, that one or more of its customers will be favored, in terms of price or otherwise, with respect to bargaining with, or submitting bids or otherwise quoting prices to, particular consumers or users of such products.

- (b) Requiring or inducing, directly or indirectly, its customers to confirm with it the prices it will charge such customers for such products in the event that such

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customers make sales to particular consumers or users of such products.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon respondent, serve by mail on all maximum discount dealers of its products a copy of this order.

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.
