

Complaint

IN THE MATTER OF

BALSA ECUADOR LUMBER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(a) OF THE
CLAYTON ACT*Docket C-1680. Complaint, Jan. 30, 1970—Decision, Jan. 30, 1970*

Consent order requiring two New York City importers and distributors of balsa flexible core material and balsa wood to cease discriminating in price between customers who compete in the resale of their products.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more fully described, have violated and are 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. Section 13), and 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 public interest hereby issues its complaint stating its charges with respect hereto as follows:

PARAGRAPH 1. Respondent Balsa Ecuador Lumber Corporation, hereinafter sometimes referred to as Balsa Ecuador, is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 500 Fifth Avenue, New York, New York.

Respondent Balsa Development Corporation, hereinafter sometimes referred to as respondent Balsa Development, is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 500 Fifth Avenue, New York, New York. Respondent Balsa Development operates a manufacturing facility at Marble Avenue, Pleasantville, New York for the production of balsa core material.

PAR. 2. Balsa (*ochroma lagopus*) is the lightest commercial wood. It has a variety of applications, including use as a structural core material by the boating industry.

Virtually all the balsa wood used in the United States is imported from Ecuador, Compania Ecuatoriana de Balsa, S.A., an Ecuadorian subsidiary of respondent Balsa Ecuador, is the world's largest producer of balsa, and respondent Balsa Ecuador accounts for a

substantial share of all the balsa wood imported into and sold in the United States.

In addition to its operation as the dominant balsa wood producer in Ecuador and as an importer of substantial quantities of balsa wood into the United States, respondent Balsa Ecuador has affiliated itself with the respondent Balsa Development Corporation, a manufacturer. Respondent Balsa Development manufactures balsa core material by gluing a number of balsa wood blocks to a mesh fabric. The primary end use of balsa core material is in the construction of hulls for pleasure craft and other boats.

Respondent Balsa Ecuador, acting as a sales representative for respondent Balsa Development, sold in excess of \$1 million worth of balsa core material in 1968. Overall balsa wood sales of respondent Balsa Ecuador in the United States were in excess of \$3 million in 1968.

PAR. 3. Respondents are now and for many years past have been engaged in commerce, as "commerce" is defined in the amended Clayton Act and the Federal Trade Commission Act. Respondents import balsa wood from outside of the United States for fabrication into core material. Thereupon, respondents cause this balsa wood core material to be shipped from their plant in Pleasantville, New York to purchasers located in other States.

PAR. 4. Respondents sell their balsa core material to users, including boat builders, who are in substantial competition with each other. Moreover, respondents are in substantial competition with other manufacturers of balsa core material, except to the extent that competition has been hindered, lessened, eliminated, or prevented as set forth in this complaint.

PAR. 5. In the course and conduct of their business in commerce, respondents have used their dominant position in the production and importation of balsa wood to attempt to monopolize the manufacture and distribution of balsa core material by refusing to sell balsa wood to manufacturers of balsa core material and by discriminating in price in the sale of balsa core material by selling such products of like grade and quality at different prices to different purchasers. Included in the discriminations alleged above are the following:

1. Respondents have discriminated in price by charging boat builders in the southeastern area of the United States lower prices than charged by respondents for the sale of these products of like grade and quality to boat builders located in other geographic areas in the United States.

2. Respondents have discriminated in price in the sale of balsa core material of like grade and quality by selling these products at different prices to competing customers. For example, respondents have discriminated between and among competing boat builders within the aforesaid southeastern area by selling to some at higher prices than the prices charged competing boat builders in the same area.

PAR. 6. The foregoing acts and practices have had and do have effect of substantially hindering, lessening, restricting, eliminating, or preventing competition between respondents and competing manufacturers or between and among respondents' favored and nonfavored customers; have had and do have the tendency or capacity to create a monopoly in respondents in the manufacture, sale and distribution of balsa core material and thereby constitute discriminations in price in violation of subsection (a) of Section 2 of the Clayton Act and unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraining of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act and Section 5 of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public

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record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Balsa Ecuador Lumber Corporation is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 500 Fifth Avenue, New York, New York.

Respondent Balsa Development Corporation is a corporation organized, existing and doing business under the laws of the State of New York with its office and principal place of business located at 500 Fifth Avenue, New York, 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

I. *It is ordered*, That respondents, Balsa Ecuador Lumber Corporation, a corporation, and Balsa Development Corporation, a corporation, and their subsidiaries, successors, assigns, officers, directors, agents, representatives or employees, directly or through any corporate or other device, in connection with the sale, or offering for sale, of balsa flexible core material in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of balsa flexible core material of like grade and quality by selling to any purchaser at net prices which are lower than the prices charged any other purchaser at the same level of distribution where respondents, in the sale of such products, are in competition with any other seller of balsa flexible core material.

2. Discriminating, directly or indirectly, in the price of balsa flexible core material of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser who competes with the purchaser paying the higher prices.

II. *It is further ordered*, That for a period of two years from the date of this order respondent Balsa Ecuador Lumber Corporation ("BELC") sell, or offer to sell, balsa wood to any manufacturer who competes with respondent Balsa Development Corporation ("BDC") in the production and sale of balsa flexible core material. This obligation to sell, or offer to sell, shall be limited to balsa wood of the quality, size and specification which, at such time within the two

year period when such competing manufacturer seeks to buy balsa wood from BELC, BELC is then selling, or offering to sell, to BDC in the normal course of business. The obligation to sell, or offer to sell, to such competing manufacturer shall be at the same prices as are available to BDC, and in reasonable quantities, having due regard to respondents' own needs.

III. *It is further ordered*, That respondents herein shall, within sixty (60) days after service upon them of this order, serve by mail a copy of this order to each operating division.

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.

IN THE MATTER OF

NEW BRUNSWICK PANTS CO., INC., ET AL.

CONSET ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS