

material with this report.

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

IN THE MATTER OF

AMERICAN CANDLE COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS.
2(d) AND 2(e) OF THE CLAYTON ACT

Docket C-1939. Complaint, June 7, 1971—Decision, June 7, 1971

Consent order requiring a Haskell, N.J., corporation manufacturing and selling religious, household and decorative candles to cease violating Sections 2(d) and 2(e) of the Robinson-Patman Act by discriminating among competing resellers of its products in paying promotional allowances, and furnishing services and facilities to some customers and not to their competitors.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges in respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent American Candle Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 63 Fourth Avenue, Haskell, New Jersey.

Amelia de Augustinas is president of the said corporate respondent. Respondent Howard Golub, vice president, and respondent Jacob Finck, treasurer, of the corporate respondent formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents manufacture and sell religious, household and decorative candles. The latter category includes colored candles, citronella and Christmas candles which are regarded as seasonal merchandise. Included also in the seasonal merchandise is a line of Electric Patio Lanterns which is sold but not manufactured by the respondents.

Respondents' total annual sales in 1968 and 1969 were in excess of \$1,000,000. During the same period, the total sales of decorated seasonal merchandise were in excess of \$500,000.

PAR. 3. In the course and conduct of their business, respondents are engaged and are now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondents sell and cause their products to be transported from their place of business, located in the State of New Jersey, to customers located in other states of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across state lines between said respondents and their customers.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale of products sold to them by respondents, and such payments were not made available on proportionately equal terms to all other customers competing in the sale and distribution of respondents' products.

PAR. 5. Included among the payments alleged in Paragraph Four are credits, or sums of money, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation or in consideration for promotional services or facilities furnished by customers in connection with the offering for sale, or sale of respondents' products, including newspaper advertising.

Illustrative of such practices, but not limited thereto, respondents during the year 1969, made payments and allowances to various customers in various areas including the Metropolitan New York area, for advertising services furnished by such customers in connection with the sale or offering for sale of respondents' products.

In the Metropolitan New York area two customers were allowed 10 percent of net purchases for advertising allowances in their stores in Manhattan, Brooklyn, Staten Island and Suffolk County. A third

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purchaser was allowed 5 percent as an advertising allowance on his purchases for a store located in Queens, New York.

Respondents did not offer and otherwise make available such promotional allowances on proportionally equal terms to all other customers in said areas, competing with those who received such allowances.

PAR. 6. The acts and practices of respondents as alleged are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

COUNT II

PARAGRAPH 1. Paragraphs One through Three of COUNT I are hereby adopted and made part of this COUNT as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of their business in commerce, respondents discriminated in favor of some purchasers against other purchasers of their products bought for resale, by contracting to furnish or furnishing or by contributing to the furnishing of services or facilities connected with the handling, sale or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionately equal terms.

PAR. 3. Included among the services or facilities furnished some purchasers, as alleged in Paragraph Two of COUNT II, is the prepayment of freight to various purchasers in various areas while requiring purchasers competing with said favored purchasers to pay freight from the respondents' plant in Haskell, New Jersey.

Illustrative of such practices, but not limited thereto, respondents, during the year 1969, prepaid freight to some purchasers in Massachusetts and Connecticut, which service was not made available to competing purchasers in the same areas.

PAR. 4. Included among the services or facilities furnished some purchasers as alleged in Paragraph Two of COUNT II is that of crediting various purchasers in various areas for unsold seasonal merchandise, which service or facility was not offered to competing purchasers.

Illustrative of such practices, but not limited thereto, respondents during the year 1969 granted three purchasers in New York City credits for unsold merchandise but did not offer the same service to competing purchasers.

PAR. 5. Included among the services or facilities furnished some purchasers as alleged in Paragraph Two of COUNT II, is that of offer-

ing various purchasers in various areas more favorable credit terms than the published terms of 1 percent 10 days, net 30 days.

Illustrative of such practices, but not limited thereto, respondents, during the year 1969, offered some purchasers in New York City, Connecticut, Massachusetts, and Rhode Island, more favorable credit terms than those offered to competing purchasers. These terms varied as to the amount of discount, the time within which the discount was allowed and the time within which net payment was due. In the areas of Norfolk, Connecticut; Fall River, Springfield and Worcester, Massachusetts; Providence, Rhode Island and Brooklyn, New York, only two purchasers paid the published credit terms.

PAR. 6. During the same period of time respondents sold their products to purchasers competing with said favored purchasers and have not furnished or offered to furnish the services or facilities as set forth in Paragraphs Three, Four and Five of COUNT II, herein, to said non-favored purchasers on proportionately equal terms.

PAR. 7. The acts and practices of respondents as alleged above violate subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13).

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 Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended; and

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 the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute 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 considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed

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in Section 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent American Candle Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 63 4th Avenue, Haskell, N.J.

Amelia De Augustinas is president of the said corporate respondent. Respondent Howard Golub, vice president and respondent Jacob Finck, treasurer of the corporate respondent formulate, direct and control the policies, acts and practices of the corporate respondent, including the acts and practices herein set forth. Their address is the same as that of the corporate respondent.

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 the respondents American Candle Company, Inc., a corporation, and its officers, and Howard Golub and Jacob Finck individually and as officers of said corporation and respondents' agents, representatives and employees, successors and assigns, directly, indirectly or through any corporate or other device, in or in connection with the sale of candles in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondents as compensation for or in consideration of advertising or promotional services, or any other service or facility furnished by or through such customer in connection with the handling, sale, or offering for sale of respondents' products, unless such payment or consideration is made available on proportionally equal terms to all other customers, including customers who do not purchase directly from respondents, who compete with such favored customer in the distribution or resale of such products.

2. Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondents' products to any purchaser of such products bought for resale when such services or facilities are not accorded on proportionally equal terms to all other purchasers, including purchasers who do

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not purchase directly from respondents, who resell such products in competition with any purchaser who received such services or facilities.

It is further ordered, That respondent corporation deliver a copy of this order to cease and desist to each of its operating divisions and to all present and future personnel of respondents engaged in the sale of respondents' products in commerce, as "commerce" is defined in the Clayton Act, as amended.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resultant in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

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

IN THE MATTER OF

SMITH SETZER AND SONS, INC., ET AL.

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

Docket C-1940. Complaint, June 7, 1971—Decision, June 7, 1971

Consent order requiring...