

IN THE MATTER OF
PONDER & BEST, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTIONS 2(a), (d) & (e) OF THE CLAYTON ACT

Docket C-2552. Complaint, Oct. 1, 1974—Decision, Oct. 1, 1974

Consent order requiring a Santa Monica, Calif., importer and distributor of photographic equipment and other products, among other things to cease discriminating in prices, promotional allowances and services or facilities between competing sellers and distributors of its goods.

Appearances

For the Commission: *Paul R. Roark.*

For the respondent: *George Caplan, Irell & Manella*, Los Angeles,
Calif.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ponder & Best, Inc., hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Sections 2(a), 2(d), and 2(e) of the Clayton Act, as amended (U.S.C. Title 15, Section 13), and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Ponder & Best, Inc., is a corporation organized, existing and doing business under and by virtue of the laws

of the State of California, with its office and principal place of business located at 1630 Stewart Street, Santa Monica, Calif.

PAR. 2. Respondent is now and has been for many years engaged in the importation, sale and distribution of photographic equipment and other products to customers located throughout the United States. These customers offer such merchandise for resale to the public. Respondent's sales of its products are substantial.

PAR. 3. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships its products or causes such products to be shipped from its place of business in Santa Monica, Calif. to purchasers located in other States of the United States.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of such products.

PAR. 5. In the course and conduct of its business in commerce, respondent has discriminated in price between different purchasers of its products of like grade and quality by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

For example, in the sale of photographic products of like grade and quality, respondent charged lower and more favorable prices to national chain and discount customers than were charged or offered to competing independent photographic dealers, who generally operate single retail outlets.

PAR. 6. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondent who receive the discriminatory lower prices.

PAR. 7. In the course and conduct of its business in commerce as aforesaid, respondent has paid or authorized payment of money, goods or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with the handling, sale or offering for sale of respondent's products, and respondent has not made

or offered to make such allowances or consideration available on proportionally equal terms to all of its other customers competing in the sale and distribution of its products.

For example, respondent has made available to some customers advertising allowances which were not made available to other competing customers on proportionally equal terms. Respondent has not had a unified promotional plan which was made available to all of its customers and has not granted proportionally equal promotional allowances to its customers competing in the sale and distribution of its photographic products.

PAR. 8. In the course and conduct of its business in commerce as aforesaid, respondent has discriminated in favor of some of its purchasers against other competing purchasers of its products bought for resale, by contracting to furnish or furnishing, or by contributing to the furnishing of, services and facilities connected with the handling, sale, or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

For example, respondent has provided its national chain and discount customers certain merchandise turnover reports which are compiled at respondent's expense. These reports are of substantial value to these customers. These reports or proportionally equal services were not made available to competing photographic dealers.

PAR. 9. Respondent's acts and practices as alleged in Paragraphs Five and Six, Seven and Eight, above, are in violation of Sections 2(a), 2(d), and 2(e), respectively of the aforesaid Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Sections 2(a), 2(d), and 2(e) of the Clayton Act, as amended (U.S.C. Title 15, Section 13); and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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

respondent 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 respondent has violated the said Act, 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 record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Ponder & Best, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1630 Stewart Street, Santa Monica, Calif.
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 Ponder & Best, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic equipment and supplies, optical instruments and lenses, electronic equipment for automobile and home entertainment, and electronic calculating machines in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in the sale or distribution of such products with such unfavored purchaser;
2. Making or contracting to make to or for the benefit of any customer any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of such products unless such payment or consideration is made available on proportionally equal terms to all other customers

competing in the sale or distribution of such products; and

3. Discriminating in favor of any purchaser against any other competing purchaser or purchasers of any product bought for resale, by contracting to furnish or furnishing, or by contributing to the furnishing of, any 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 proportionally equal terms.

As used in this order "photographic equipment and supplies" shall include all photographic apparatus, equipment, parts, attachments, and accessories, such as still and motion picture cameras, projection and enlargement apparatus, photocopy and microfilm equipment, exposure meters, tripods, lens shades and filters, and other photographic equipment; sensitized film, paper, cloth, and photographic chemicals for use therewith; and developing machines, tanks and other equipment, photographic driers and mounting presses. As used in this order "optical instruments and lenses" shall include photographic, magnifying, projection and instrument lenses, lens mounts, binoculars, microscopes and other optical instruments, equipment and accessories. As used in this order "electronic equipment for automobile and home entertainment" shall include radios and televisions, phonographs and reel, cassette and cartridge tape recorders and players, loudspeakers, amplifiers, and other electronic entertainment equipment and accessories for use in the home, automobile or any other place. As used in this order "electronic calculating machines" shall include pocket and desk calculators, and accessories.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting 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 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.

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FEDERAL TRADE COMMISSION DECISIONS

Complaint

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IN THE MATTER OF