

Complaint

IN THE MATTER OF

YKK (U.S.A.) INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 (A)
OF THE CLAYTON ACT

Docket C-3070. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires a New Jersey based firm engaged in the manufacture and sale of finished zippers, zipper chain and sliders, among other things, to cease discriminating in price between different customers on the same functional level, purchasing products of like grade and quality, through the use of discriminatory prices and rebates.

Appearances

For the Commission: *Randall S. Leff* and *Karen G. Bokat*.

For the respondent: *Francis Y. Sogi, Miller, Montgomery, Sogi, Brady & Taft*, New York City, *James H. Lundquist, Barnes, Richardson & Colburn*, New York City, and *Salvatore A. Romano, Arent, Fox, Kintner, Plotkin & Kahn*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent, subject to the jurisdiction of the Commission, has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) and of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent YKK (U.S.A.) 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 place of business located at 1251 Valley Brook Ave., Lyndhurst, New Jersey.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, distribution and sale of finished zippers, zipper chain and sliders.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, as amended, having sold or shipped its products or caused them to be transported from its principal place of business in New Jersey

or manufacturing facility in Georgia to customers located in other States of the United States or the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has discriminated in price between different purchasers of finished zippers of like grade and quality, zipper chain of like grade and quality, and sliders of like grade and quality in commerce through the use of discriminatory prices, discounts, rebates and deductions on sales within the United States.

PAR. 5. The effect of respondent's discriminations in price alleged in Paragraph 4 has been or may be substantially to lessen or prevent competition in the sale of finished zippers, zipper chain and sliders.

PAR. 6. The acts and practices of respondent set forth in Paragraphs 4 and 5 above violate Section 5 of the Federal Trade Commission Act, as amended, and Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief herein contemplated.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton and Federal Trade Commission Acts; and

The respondent, its attorneys, 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 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 record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission

hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent YKK (U.S.A.) Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and the principal place of business located at 1251 Valley Brook Ave., Lyndhurst, New Jersey.

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

Definitions

For purposes of this Order the following definitions apply:

1. *Slide Fastener Manufacturer* means an integrated manufacturer who produces finished zippers, zipper chain, and sliders.

2. *Assembler* means a customer who purchases finished zippers, zipper chain, sliders or components such as tops, bottoms, opening parts and wire from various manufacturers and assembles and sells finished zippers.

3. *Jobber* means a customer who a) purchases finished zippers of various sizes from manufacturers and assemblers for sale to users or b) purchases zipper chain and sliders for resale without assembly or finishing.

4. *User* means a customer who purchases finished zippers, zipper chain, sliders and components in order to incorporate them in products other than finished zippers that it manufactures.

I

It is ordered, That respondent YKK (U.S.A.) Inc. and its officers, representatives, agents, employees, successors, and assigns, directly, indirectly, or through any corporate or other device, in or in connection with the sale of finished zippers of like grade and quality, zipper chain of like grade and quality, or sliders of like grade and quality in or affecting commerce as "commerce" is defined in the amended Clayton Act or Federal Trade Commission Act do forthwith cease and desist from:

Discriminating directly or indirectly in the price of finished zippers of like grade and quality, zipper chain of like grade and quality, or sliders of like grade and quality as between customers on the same functional level where respondent YKK is in competition

with any slide fastener manufacturer in the sale of finished zippers, zipper chain, or sliders or with any assembler in the sale of finished zippers. For the purposes of this Order, assemblers, jobbers and users are on different functional levels.

II

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating departments and divisions engaged in the offering for sale, sale, distribution, marketing, or promotion of finished zippers, zipper chain and sliders.

III

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in its corporate organization that may affect compliance obligations arising out of this Order, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

IV

It is further ordered, That respondent shall within sixty (60) days after service on it of this Order file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with this Order.

Complaint

IN THE MATTER OF

MILES LABORATORIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2 OF
THE CLAYTON ACT

Docket C-3071. Complaint, July 17, 1981—Decision, July 17, 1981

This consent order requires an Elkhart, Indiana manufacturer and seller of various non-prescription health care products, among other things, to cease failing to make its advertising and promotional allowances available on proportionally equal terms to all customers, both direct and indirect. The order also requires the company to notify all its customers, as specified, of its advertising and promotional programs, and of the availability of usable and economically feasible alternatives. Respondent is further required to distribute a special written notice informing customers of the modification in its promotional programs and provide its sales personnel with a copy of the order.

Appearances

For the Commission: *Randall S. Leff.*

For the respondent: *Franklin Breckenridge*, in-house counsel, Elkhart, Ind. and *James M. Johnstone, Kirkland & Ellis*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above named respondent has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 41, *et seq.*) and subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13), and believing that a proceeding by it in respect thereof is in the public interest, hereby issues this complaint, charging as follows:

PARAGRAPH 1. Respondent, Miles Laboratories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 1127 Myrtle St., Elkhart, Indiana.

PAR. 2. Respondent is now and for many years has been engaged in the manufacture, sale and distribution of adult vitamins, pediatric vitamins and antacid products.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act and Federal Trade Commission Act, having sold