

IN THE MATTER OF
LENOX, INCORPORATED

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8718. Final Order, April 19, 1968—Modifying Order, July 12, 1982

This order reopens the proceeding and modifies the Commission's modified order issued on June 24, 1970, 77 F.T.C. 860, by deleting Paragraph 8 from the order, so as to allow Lenox to prevent transshipping of its products by its authorized dealers. The Commission has also included a provision which prevents Lenox from taking disciplinary action against any dealer for transshipment which occurred before the effective date of the order.

DECISION AND ORDER

Whereas, a "Request of Lenox, Incorporated for Modification of Final Order" was filed by Respondent on March 15, 1982 pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51, wherein Lenox, Incorporated seeks a partial modification of the order that issued on June 24, 1970 by the deletion of Paragraph 8; and

Whereas, the matter was thereafter placed on the public record for thirty (30) days pursuant to Section 2.51(c) of the Commission's Rules of Practice, 16 C.F.R. 2.51(c), during which time comments from the public were received; and

Whereas, the Commission thereafter considered the Petition presented by Lenox, Incorporated and all of the materials and information submitted as public comments on the petition and has determined that the request makes a satisfactory showing that changed conditions of fact and law and the public interest require that the order be reopened for the purpose of modification.

Accordingly, *it is ordered* that the matter is reopened and that the order is modified by deleting the language of paragraph 8 that reads:

Requiring or inducing, by any means, dealers or prospective dealers to refrain, or to agree to refrain, from reselling respondent's products to any dealers or distributors;

It is further ordered, That paragraphs 9 and 10 be renumbered to 8 and 9.

It is further ordered, That nothing herein shall be construed to permit respondent to terminate or otherwise discipline any dealer for (1) having resold respondent's products to any dealer or distributor prior to the effective date of this order or (2) for any such resale

that occurs prior to the dealer's receipt of notice that it may be disciplined for such resale.

Commissioner Bailey voted in the negative.

SEPARATE STATEMENT OF COMMISSIONER PERTSCHUK

I wish to make clear why I voted for Lenox's petition to modify the Commission order prohibiting it from engaging in resale price maintenance. The petition persuaded me that the ban on transshipping, which was included in the order originally only as an *ancillary* means of deterrence, was no longer a necessary safeguard against vertical price fixing by Lenox and could safely be dropped from the order. The petition argued that the requested relief was also necessary to maintain a strong Lenox presence and vigorous interbrand competition in the houseware china business, and that it would not cause a rollback of the gains in intrabrand competition that have occurred during the life of the order. In this regard, I found the petition to be much less persuasive. I do not believe it has been established in this reopening proceeding that competition in the china industry will be improved as a result of allowing Lenox to prevent transshipping of its products by its authorized dealers. However, since Lenox has met the statutory standard for modifying orders by showing that the ancillary transshipping provision is no longer appropriate under the circumstances, it is entitled to the relief granted.

IN THE MATTER OF

BASF WYANDOTTE CORPORATION

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9125. Complaint, April 5, 1979—Final Order, July 12, 1982

This order upholds the Administrative Law Judge's May 14, 1982 Initial Decision in this matter and effects dismissal of the complaint on July 13, 1982. The complaint charged the wholly-owned American subsidiary of a German chemical corporation with antitrust violations in the organic pigments market.

Appearances

For the Commission: *Glenn M. Fellman, James K. Leonard, Leo J. Asaro and David Marx, Jr.*

For the respondent: *James T. Halverson, Thomas M. Geisler, Jr., Leonard Gross, Bradford Anderson, Prissilla Elliot, Paul E. Francis and John P. Walsh, Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named Respondent, subject to the jurisdiction of the Commission, has acquired the Pigments Division of Chemetron Corporation, a wholly-owned subsidiary of Allegheny Ludlum Industries, Inc., which acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

Definition

For purposes of this complaint the following definition shall apply:

Organic pigments - insoluble color particles characterized by a chemical composition which includes carbon rings or chains as the basic part of their molecular structure and used to impart color to a variety of materials.