

Complaint

IN THE MATTER OF

PETER PAN FOUNDATIONS, INC.

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

Docket C-1178. Complaint, Mar. 1, 1967—Decision, Mar. 1, 1967

Consent order requiring a New York City marketer of women's foundation garments to cease discriminating among competing customers in paying promotional allowances and in furnishing services or facilities.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act (U.S.C., Title 15, Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Peter Pan Foundations, 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 389 Fifth Avenue, New York, New York, with an administrative office located at 6 Penn Place, Pelham Manor, New York.

In September of 1965, Exquisite Form Industries, Inc. (incorporated in New York State in 1961), bought 80% of the stock in Peter Pan Enterprises Corp. (which was incorporated in New York State in September of 1965). Peter Pan Enterprises Corp. in turn owns 100% of Peter Pan Industries, Inc., (incorporated in the State of Delaware in 1962) and the latter corporation owns 100% of Peter Pan Foundations, Inc., the above-named respondent (which was incorporated in New York State in 1938). Peter Pan Enterprises Corp. and Peter Pan Industries, Inc., are nonoperating holding companies.

PAR. 2. Peter Pan Foundations, Inc., is engaged in the business of selling and distributing women's foundation garments, including brassieres, corselettes, girdles, and panty girdles bearing the Peter Pan label which are manufactured by various corporations in the Peter Pan complex. Respondent corporation's gross

volume of business was approximately eight million dollars in each of the years 1964 and 1965.

Peter Pan products are manufactured in New York, New Jersey, Connecticut and Puerto Rico, and then shipped to a warehouse located at 255 Grant Avenue, East Newark, New Jersey, from which deliveries are made to customers located in various cities throughout the United States. The respondent corporation sells these products for resale at retail to many customers, such as department stores, chainstores, women's specialty shops and dress shops, with places of business located in various cities throughout the United States.

PAR. 3. In the course and conduct of its business, respondent corporation is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, having shipped its products or caused them to be transported from its warehouse in the State of New Jersey to customers located in the same and in other States of the United States and in the District of Columbia.

PAR. 4. Since 1960 and prior thereto, in the course and conduct of its business in commerce, respondent corporation paid or contracted for the payment of something 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 their offering for sale or sale of products sold to them by said respondent corporation, and such payments were not available on proportionally equal terms to all other customers competing in the distribution of its products.

PAR. 5. Included among, and illustrative of, the payments alleged in Paragraph Four were credits, paid by way of allowances or deductions from invoices, as compensation for respondent corporation's share of the cost of promotional services or facilities, including but not limited to newspaper advertising furnished by customers pursuant to the terms of respondent corporation's cooperative advertising agreements or other promotional arrangements in effect since 1960, in connection with the offering for sale or sale of respondent corporation's products.

PAR. 6. From 1960 to on or about January 1, 1963, and prior thereto, respondent corporation, pursuant to its "Cooperative Advertising Agreement for Peter Pan Foundations" offered to pay, and paid, some customers fifty percent (50%) of the cost of newspaper advertisements devoted exclusively to Peter Pan products. The Agreement further provided that Peter Pan products had to be advertised in accredited newspapers at regularly maintained prices, and that respondent corporation would pay

fifty percent (50%) of reasonable production charges. The total amount of all advertising claims, including production charges, was limited to five percent (5%) of aggregate net purchases for the current year.

PAR. 7. From 1960 to on or about January 1, 1963, and prior thereto, respondent corporation supplemented its cooperative advertising agreement referred to in Paragraph Six by its "Peter Pan Merchandising Plan for Retailers." This plan was only available to those customers who could qualify. In order to qualify, a customer was required to:

(1) Carry at least four of the styles included in the plan and maintain a Fixed Basic Stock level for each of the styles. The Fixed Basic Stock level for each of the styles included in the plan was determined by the individual customer and the Peter Pan representative;

(2) Allow the Peter Pan representative to take physical inventory and automatically order the merchandise necessary to maintain the inventory at the Fixed Basic Stock level;

(3) Advertise the Peter Pan styles in Fixed Basic Stock in local newspapers at least once every six months or run a complete in-store promotion at least once every six months;

(4) Participate in the plan for at least twelve consecutive months and display Peter Pan merchandise and use Peter Pan display materials.

In return, the customer was entitled to:

(a) Return any style in Fixed Basic Stock which did not turn over at least twice during six months but that style had to be replaced with another style included in the plan;

(b) Exchange sizes within style and color to conform stock with Fixed Basic Stock;

(c) Raise or lower basic quantities initially established for any style in Fixed Basic Stock at end of each six month period;

(d) Preferred delivery on Fixed Basic Stock styles regardless of the size of the order;

(e) Reimbursement of sixty percent of net cooperative advertising costs up to seven percent of total net shipments during each six month period;

(f) Certain promotional materials such as mats, window and interior displays, commercials, and contest ideas, etc.

(g) Return quantities of each style in Fixed Basic Stock up to but not exceeding the quantity purchased and received during each six month period the plan is in effect and only that merchandise purchased at Peter Pan's regular prices.

PAR. 8. During the years 1960 to 1964 inclusive, respondent corporation has granted or otherwise made available allowances, hereinafter referred to as "PM's" or "Push or Prize Monies," to sales employees of certain customers classified as "chains" to promote the sale of respondent corporation's products, and such allowances have not been offered or otherwise made available on proportionally equal terms to customers competing with the "chains" in the resale at retail of respondent corporation's products.

PAR. 9. On or about January 1, 1963, respondent corporation modified its "Cooperative Advertising Agreement for Peter Pan Foundations" by offering to pay seventy-five percent (75%) of the cost of newspaper advertisements devoted exclusively to Peter Pan products at regularly maintained prices not to exceed seven percent (7%) of a customer's aggregate net purchases for the calendar year. This modified plan did not provide for the payment of production costs and did not authorize cooperative advertising allowances for omnibus ads.

On or about June 1, 1964, respondent's cooperative advertising program was further modified to provide for the payment of sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the cost of newspaper advertisements not to exceed seven percent (7%) of net sales on regular priced merchandise.

PAR. 10. From time to time, respondent offered "Special Promotional" agreements, which did not come within the general framework of its "Cooperative Advertising Agreement for Peter Pan Foundations" such as its "Tiger," "In-Genius" and "Fiberlon" promotions. These plans required that a Peter Pan customer purchase a total minimum order; specified the number of garments which must appear in the advertisement; and specified the minimum size of the advertisement. For example on or about July 25, 1964, in connection with the promotion and sale of Peter Pan's "Fiberlon" bras, the respondent offered the following plan:

Peter Pan agrees to pay the following cost of advertising space up to 7% of net sales (based on a 12 month period).

Bra Styles	Size of ad	Min. order
<input type="checkbox"/> 1 Fiberlon Bra in the ad 70%.....	200 lines	5 doz.
<input type="checkbox"/> 2 Fiberlon Bras in the ad 80%.....	400 lines	10 doz.
<input type="checkbox"/> 3 Fiberlon Bras in the ad 90%.....	600 lines	15 doz.
<input type="checkbox"/> 4 Fiberlon Bras in the ad 100%.....	800 lines	20 doz.

PAR. 11. Payments made by respondent corporation pursuant to the cooperative advertising agreements and "Push or Prize Money" agreements referred to in Paragraphs Six, Seven, Eight, Nine and Ten were not made available on proportionally equal terms to all of respondent corporation's customers competing in the resale and distribution of respondent corporation's products in that:

(1) Respondent corporation made or offered to make such payments or allowances to some customers and failed to make or offer to make similar allowances or payments to all competing customers; and

(2) The terms and conditions of respondent corporation's "Cooperative Advertising Agreement for Peter Pan Foundations" and "Peter Pan Merchandising Plan for Retailers" and its "Special Promotional" agreements were and are such as to preclude some competing customers from accepting and enjoying the benefits to be derived from these plans; and

(3) Respondent corporation made or offered to make payments or allowances in excess of the amounts specified in these agreements to some customers and failed to make or offer to make similar payments or allowances on proportionally equal terms to other customers who competed with the favored customers in the resale and distribution of respondent corporation's products; and

(4) Respondent's price-limiting provisions in its cooperative advertising plans only allowed for advertising at "regular" prices and thus restricted the availability of its cooperative advertising allowances to those of its competing customers who complied with respondent's price-limiting provisions.

PAR. 12. The acts and practices of the respondent corporation as alleged above, violate 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

PAR. 13. Paragraphs One through Three of COUNT I are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 14. The respondent corporation, for a number of years, has contracted to furnish and has furnished to some of the afore-said purchasers, certain services or facilities in connection with the sale or offering for sale of respondent corporation's products and such services or facilities or the offer to furnish such services

or facilities have not been accorded on proportionally equal terms to purchasers competing with the favored purchasers in the resale and distribution of respondent corporation's products.

For example, respondent has, since 1960, listed certain of its customers in various ads in national magazines, in numerous radio and television spots, which were paid for entirely by the respondents. Such customers named were required to purchase a substantial minimum amount of certain merchandise.

As another example, respondent has, since 1960, furnished to some of the aforesaid purchasers the services of special personnel known as "stylists" or "models." Such female personnel, compensated and furnished by respondent, were installed in the places of business of some of the aforementioned purchasers to assist the clerical personnel of said purchasers in advising customers and to display, demonstrate, fit, offer for sale and sell respondent's products to the customers of said purchasers.

During the same period of time, the respondent corporation has sold its products to retailers competing with said purchasers and has not accorded such services and facilities to said retailers on proportionally equal terms.

PAR. 15. The aforesaid acts and practices of respondent corporation 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 Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; 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 complaint to issue herein, 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 set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby

accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Peter Pan Foundations, 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 principal place of business located at 389 Fifth Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Peter Pan Foundations, Inc., a corporation, and its officers, directors, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale and distribution of women's wearing apparel such as brassieres and other related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying, or contracting to pay to or for the benefit of any customer, an advertising allowance, push money or anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of respondent's products, unless such payment or consideration is offered and otherwise made available on proportionally equal terms to all other customers competing in the distribution or resale of such products;

2. Discriminating, directly or indirectly, among competing purchasers of its products, by contracting to furnish, furnishing, or contributing to the furnishing of the services of stylists or any other services or facilities connected with the processing, handling, sale or offering for sale of respondent's products, to any purchaser from respondent of such products bought for resale, unless such services or facilities are offered and otherwise made available on proportionally equal terms to all purchasers competing in the distribution or resale of such products.

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.

